17 Otto 617

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1126.

THOMAS COCHRAN ET AL., SURVIVORS, &c., PLAINTIFFS IN ERROR,

vs.

AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS.

No. 1127.

AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, PLAINTIFF IN ERROR,

vs.

THOMAS COCHRAN AND WILLIAM BARBOUR, SURVIVORS, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 30, 1882.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between Thomas Cochran et al., survivors, &c., plaintiffs in error, and Augustus Schell, late collector of customs, defendant in error, a manifest error hath happened, to the great damage of the said Thomas Cochran et al., survivors, &c., plaintiffs in error, as is said, and as appears by their complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the third Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of October, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] JOSEPH M. DEUEL,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The within writ is allowed.

WM. J. WALLACE.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from five to fifty-nine, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Thomas Cochran et al., survivor', &c., plaintiffs in error, against Augustus Schell, late collector of customs, defendant in error, and Augustus Schell, late collector of customs, plaintiff in error, against Thomas Cochran et al., defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 27th day of October, in the year of our Lord one

thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

(Indorsed:) O. S., 1865. U. S. circuit court, southern district of New York. E. & A. A 385. Thomas Cochran et al., survivors, &c., pl'ff' in error, vs. Augustus Schell, late collector of customs, d'f't in error. O. S., 1865. Writ of error. George Bliss, pl'ff' att'y. U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

Due service of a copy of within writ of is hereby admitted.
Dated Oct. 16, 1882.

S. L. WOODFORD,
Attorney for Defendant in Error.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit before you, between Augustus Schell, plaintiff in error, and Thomas Cochran & William Barbour, survivors, &c., defendants in error, a manifest error hath happened, to the great damage of the said Augustus Schell, as by his complaint appear': We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October, eighteen hundred and eighty-two, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 14th day of October, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

The foregoing writ is hereby allowed.

WM. J. WALLACE.

4 (Indorsed:) O. S. 1865. E. & A. A. 385. U. S. Supreme Court. Augustus Schell, plaintiff in error, against Thomas Cochran, & ano., &c., defendants in error. Writ of error. S. L. Woodford, attorney for plaintiff in error. To George Bliss, attorney for defendants in error.

Due service of a copy of the within writ of error is hereby admitted this 16th day of October, 1882.

GEORGE BLISS,
Attorney for Def'ts in Error,
P'r A. H.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

See return of clerk on preceding writ of error.

JOSEPH M. DEUEL, *Clerk.*

5 The President of the United States of America, to the judges of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against Augustus Schell, defendant, by S. Cochran et al., plaintiffs, do therefore command you that the record and proceedings in said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 29th day of February, 1864, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, the 12th day of February, in the year one thousand eight hundred and sixty-four.

[L. S.] KENNETH G. WHITE, *Clerk.*

E. DELAFIELD SMITH, *Defendant's Attorney.*

6 (Indorsed:) U. S. circuit court. Augustus Schell ads. S. Cochran et al. Copy certiorari. E. Delafield Smith, defendant's att'y.

SIR: Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, Feb'y 24, 1864.

Yours, &c.,

E. DELAFIELD SMITH,
Defendant' Att'y.

To , *Plaintiff's Attorney.*

Due service of a copy of the within and of the above notice is hereby admitted.

New York, Feb'y 12, 1864.

K., F., W.,
Plaintiff's Attorney.

7 Circuit court of the United States for the southern district of New York.

S. COCHRANE ET AL., PLAINTIFFS,
against
AUGUSTUS SCHELL, LATE COLLECTOR OF THE port of New York, defendant. } O. S. 1865.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by Kaufmann, Frank & Wilcoxson, their attorneys, come here into court and suggest and give the court now here to understand and be informed that heretofore, to wit, on the 31st day of Dec'r last past, an action was commenced in the supreme court of the State of New York in and for the city and county of New York, according to the laws of the State of New York and the rules and practice of said court in such case

made and provided, in favor and in the name of the said plaintiffs against the defendant herein, upon and for the same cause of action herein-
8 after set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the 31st day of Dec'r, 1863.

That the defendant afterwards, by E. Delafield Smith, esq., his attorney, duly appeared in said action; and such proceedings were thereupon had that afterwards and on the 12th day of Feb., in the year of our Lord one thousand eight hundred and sixty-four, the said action was in due form of law removed, by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided; and the clerk of the said supreme court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court; which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action
9 against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein, in a plea of trespass on the case.

For that whereas the said defendant, on the 31st day of Dec'r, 1863, at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of 1,900 dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by said plaintiffs, before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year,
10 and at the place aforesaid undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the plaintiffs of and concerning, divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of nineteen hundred dollars, of lawful money as aforesaid, and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then there
11 faithfully promised the said plaintiffs' well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above-mentioned, or any or either of them,

or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, has hitherto wholly refused, and still does refuse to the damage of the said plaintiffs of nineteen hundred dollars.

And therefore the plaintiffs bring suit, &c.

KAUFMANN, FRANK & WILCOXSON,
Plaintiff's Attorneys, 39 *Nassau st.*

12 (Endorsed:) U. S. circuit court. S. Cochran et al., plaintiffs, vs. Augustus Schell, late collector of the port of New York, defendant. Declaration.

Take notice that on filing a declaration in this cause, with a copy of which you are hereby served, a rule has been entered in the book of common rules, kept in the office of the clerk of this court, requiring the within named defendant to plead *to plead* to said declaration within twenty days after service of a copy of said declaration and a notice of said rule or judgment on his attorney.

New York, 186 .

KAUFMANN, FRANK & WILCOXSON,
Plff's' Att'ys, 39 *Nassau st.*

To E. DELAFIELD SMITH, Esq.,
Defendant's Attorney, 41 *Chambers st.*

Service of a copy of within is hereby admitted.

E. D. S.,
Defendant's Att'y.

NEW YORK, *Ap'l* 28, 1864.

13 United States circuit court, southern district of New York.

A. SCHELL *ads.* S. COCHRAN & AL. } Plea.

And the said defendant, A Schell, by S. G. Courtney, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

S. G. COURTNEY,
Defendant's Attorney.

To K., F. & W., Esq.,
Plaintiffs' Attorneys.

(Endorsed:) U. S. circuit court. A. Schell ads. S. Cochran & al. Plea.

You will please take notice that the plea of the defendant in the
14 above cause, of which the within is a copy, was this day filed in the

office of the clerk of the U. S. circuit court for the southern district of New York.

New York, April 30, 1866.

Yours, &c.,

S. G. COURTNEY,
Defendant's Attorney.

To K., F. & W.,
Plaintiff's Attorney'.

15 At a stated term of the circuit court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 30th day of April, in the year of our Lord one thousand eight hundred and eighty.

Present, the honorable Samuel Blatchford, judge.

SAMUEL COCHRANE ET AL.
vs.
AUGUSTUS SCHELL. } O. S. 994.

SAME
vs.
SAME. } O. S. 1865.

Upon reading and filing the affidavit of George Bliss, dated M'ch 16th, 1880, and that of Thomas Cochran, dated January 26th, 1880, together with plaintiffs' notice of motion and admission of service thereof. After hearing Mr. Bliss for the plaintiffs, Mr. Woodford appearing for the defendant, and on motion of George Bliss, attorney for the plaintiffs,

16 it is ordered that the two actions above entitled be consolidated into one, to be known as O. S. 1865; said consolidated action to retain the number and place on the calendar which it now occupies. And it is further ordered that the said consolidated action be continued in the name of Thomas Cochran and William Barbour, survivors of S. Cochran & Co. vs. Augustus Schell. And it having been heretofore stipulated in one of said actions that no claim was or should be therein made for a recovery upon what are known as commissions and charges, it is hereby ordered as a condition of the granting of this order that the stipulation shall apply to the action as consolidated.

SAM'L BLATCHFORD.

17 U. S. circuit court, so. dist. of New York.

TUESDAY, *May 2nd*, 1882.

The court meets pursuant to adjournment, and is opened by proclamation.

Present, Judge Shipman.

THOMAS COCHRAN ET AL.
vs.
AUGUSTUS SCHELL. } O. S., 1865.

Mr. Bliss moves that the court direct the jury to find a verdict for the plaintiffs, and is heard in support of said motion. Mr. Herrick is heard in opposition thereto.

The court directs the jury to find a verdict for the plaintiffs for as much of the claim in plaintiffs' bill of particulars as relates to thread lace, and also for so much of the claim in plaintiffs' bill of particulars as relates to illegal fees exacted upon oaths, stamps, transfers, and delivery orders.

The jury say that, by direction of the court, they find a verdict for the plaintiffs upon so much of the claim in plaintiffs' bill of particulars
18 as relates to thread lace, and also upon so much of the claim in plaintiffs' bill of particulars as relates to illegal fees exacted upon oaths, stamps, transfers, and delivery orders, and so say they all.

On motion of Mr. Herrick, the court instructs the jury that the plaintiffs herein are not entitled to recover upon so much of the claim in said plaintiffs' bill of particulars as relates to cotton laces and insertings.

Mr. Bliss excepts to the ruling of the court in instructing the jury that the plaintiffs herein are not entitled to recover upon so much of the claim in said plaintiffs' bill of particulars as relates to cotton laces and insertings.

Prior to the rendering and recording of the verdict herein, Mr. Herrick excepts to the ruling of the court in directing the jury to find a verdict for the plaintiffs upon so much of the claim in plaintiffs' bill of particulars as relates to thread lace, and also upon so much of the
19 claim in plaintiffs' bill of particulars as relates to illegal fees exacted upon oaths, stamps, transfers, and delivery orders.

Counsel for the respective parties herein consenting in open court, it is ordered that it be, and it is hereby, referred to I. Augustus Stanwood, as auditor, to assess and report to this court with all convenient speed the amount due the plaintiffs on the aforesaid verdict herein.

On motion of Mr. Herrick, ordered that the defendant have a stay of proceedings herein for ten days after the coming in of the report of said auditor.

On like motion it is further ordered that a certificate of probable cause be entered herein.

An extract from the minutes.

May 9th, 1882.

JOSEPH M. DEUEL, *Clerk.*

Ex'd: T.

20 (Endorsed:) O. S., 1865. U. S. circuit court, south. dist. of New York. Thomas Cochran et al. vs. Augustus Schell. Verdict May 2nd, 1882. A. W. Griswold, pl'ffs' att'y.

21 Circuit court of the United States for the southern district of New York.

THOMAS COCHRAN ET AL., SURVIVORS, &C., *vs.* AUGUSTUS SCHELL. } O. S., 1865.

In pursuance of an order made in the above-entitled cause, on the 2nd day of May, 1882, by which, among other things, it was referred to the undersigned to adjust the amount due plaintiffs for excess of fees paid defendant under this verdict in this cause rendered May 2nd, 1882:

Now I, I. Augustus Stanwood, auditor, to whom the matter was referred, do report that the plaintiffs are entitled to recover, under said verdict, for such excess of fees paid defendant, the sum of six hundred & thirteen $\frac{20}{100}$

dollars, and to interest thereon from the dates of payment to the date of said verdict, May 2nd, 1882, amounting to eleven hundred &
22 twenty $\frac{60}{100}$ dollars, in the aggregate amounting to seventeen hundred & thirty-four $\frac{80}{100}$ dollars. Dated October 6th, 1882.

I. AUGUSTUS STANWOOD, *Auditor.*

(Indorsed:) U. S. circuit court, south. dist. of New York. Thomas Cochran et al., survivors, &c., vs. Augustus Schell. O. S., 1865. Referee's report of am't due pl'ffs on fees. I. A. Stanwood, auditor. George Bliss, pl'ffs' att'y.

23 And the said defendant, by the U. S. district attorney, his attorney, comes and defends the wrong and injury, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs have above thereof declared against him, and of this he puts himself upon the country, &c. Therefore the issue above joined is ordered by the said court to be tried by a circuit court appointed to be held at the city hall of the city of New York on the first Monday of April, in the year 1882. And now at this day, to wit, the 2nd day of May, 1882, being as yet of the said April term, 1882, before the said justices, at the city hall of the said city of New York, came the said parties by their attorneys aforesaid; and the said circuit judge before whom the said issue*d* was tried, has sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the day and at the place within
24 contained, before Nathaniel Shipman, esq., judge of the said circuit court, came as well the within-named plaintiffs as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made being summoned also came, who, to speak the truth in the matters within contained being chosen, tried, and sworn upon their oaths do say that the said defendant did undertake and promise in manner and form as the said plaintiffs have above thereof complained against him, and they assess the damages of the said plaintiffs,
1,734 80 by reason of the premises, at the sum of seventeen hundred
158 03 and thirty-four & $\frac{80}{100}$ dollars for excess of fees paid defendant
1,892 83 over and above their costs and charges by him about his suit in this behalf expended, and for those costs and charges the sum of one hundred and fifty-eight & $\frac{03}{100}$ dollars. Therefore it is considered that the said plaintiffs recover against said defendant their damages aforesaid by the jurors aforesaid in form aforesaid found, and also their
25 costs and charges of increase by the court now here adjudged to the said plaintiffs, with their assent, which said damages, costs, and charges in the whole amount to eighteen hundred and ninety-two & $\frac{83}{100}$ dollars.

Judgment signed this 14th day of Oct., 1882. Hunc pro tunc as of Oct. 7th, 1882, as per order of court.

JOHN A. SHIELDS,
Deputy Clerk.

$1,734.80; costs, 158.03—$1,892.83.

26 (Endorsed:) O. S. 1865 U. S. circuit court. Thomas Cochran et al., survivors, &c., vs. Augustus Schell. O. S. 1865. Judgment roll. George Bliss, pl'ffs' att'y. U. S. circuit court. Filed Oct. 14, 1882. Joseph M. Deuel, clerk.

27 *Bill of exceptions.*

Circuit court of the United States for the southern district of New York.

THOMAS COCHRAN AND WILLIAM BARBOUR, surviving partners of S. Cochran & Co.,
vs.
AUGUSTUS SCHELL.

Afterwards, to wit, at a term of the circuit court of the United States for the southern district of New York, held on the second day of May, 1882, before the honorable Nathaniel Shipman, one of the judges of said court, according to the form of the statute in such case made and provided, the issue joined herein upon the pleadings aforesaid, came on to be tried by a jury of the district aforesaid, for that purpose duly impanelled, at which day came there as well the said plaintiffs as the said defendants, by their respective attorneys aforesaid, and the jurors of the jury
28 aforesaid, impanelled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the said issue; and upon the trial of that issue the counsel for the said plaintiffs, to maintain and prove the said issue on their part, gave in evidence that at various times in the years 1857, 1858, 1859, 1860, and 1861, the plaintiffs' firm imported into the United States, and duly entered at the port of New York, certain goods, wares, and merchandise, namely: Cotton laces and cotton insertings, then and there subject to duties. That said goods consisted of laces and insertings composed wholly of cotton, and were either bleached or dyed; that the defendant, being then and there collector of the said port, levied and assessed duties upon the said goods at the rate of twenty-four per centum ad valorem, which duties at the said rate were paid to the defendant by plaintiffs' firm on each of said entries,
29 under and accompanied by a protest in writing, presented to the said collector at or before the time of such payments respectively, against paying twenty-four per centum duty, claiming that said cotton laces and cotton insertings are specially provided for under Schedule D of tariff act of July 30th, 1846, as modified by the act of March 3rd, 1857, at a duty of nineteen per centum ad valorem, and no more.

That previous to about 1879 there were no cotton laces printed or painted, and that from 1850 to 1861 there were many goods composed wholly of cotton, and bleached, printed, painted, colored, or dyed, such as calicoes (prints), lawns, handkerchiefs, velvets and velveteens, and cotton piece goods generally.

The counsel for defendant offered no evidence.

Counsel for the plaintiffs then requested the court to direct a verdict for plaintiffs on the ground that the goods were liable to a duty of only nineteen per centum, under schedule D of act of 30th July, 1846,
30 as amended by section 1 of act of March 3rd, 1857. The court denied this request; to which ruling the counsel for plaintiffs then and there duly excepted, which exception was duly noted and allowed by the court.

Counsel for defendant then requested the court to instruct the jury that plaintiffs could not recover, on the ground that the duty was correctly as-

sessed at twenty-four per centum under section 2 of act of March 3rd, 1857. Which request the court granted, and to this ruling counsel for plaintiffs then and there duly excepted, which exception was duly noted and allowed by the court.

And inasmuch as none of the said several matters so produced and given in evidence by said plaintiffs, and by their counsel aforesaid excepted to, appear by the record of the verdict aforesaid, the said counsel for said plaintiffs did then and there propose their aforesaid exceptions to
31 the decisions, rulings, and direction of the said judge, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence, and said decisions, rulings, and direction, as aforesaid; and thereupon the said judge, at the request of said counsel for plaintiffs, did put his seal hereto and sign the same on the 7th day of October, A. D. 1882.

N. SHIPMAN, *Judge*. [L. S.]

32 The counsel for the plaintiffs, further to maintain and prove the said issue, gave in evidence a large number of invoices, and entries thereof, made by the plaintiffs' firm, of merchandise imported by them into the port of New York during the period above-mentioned, a copy of one of which invoices is annexed marked Exhibit A, and a copy of one of which entries is annexed marked Exhibit B. And upon the presentation by the plaintiff's firm to the collector of an invoice and entry like said Exhibits A & B, the said defendant, before he would receive them as collector, for the convenience and security of himself and the government, impressed on each invoice a stamp or certificate in the form of that on the back of the annexed copy of invoice marked Exhibit A, which certificate is in the form and words following, viz:

33 One hundred and seventy-six pounds, ½d.

E. D. Ogden.
15 %.

I certify that this invoice was presented to me
On entry 552.
G. S. C.
Endymion.
CUSTOM-HOUSE, NEW YORK
this 19 day of Jan'y, 1858.
(S'g'd) S. P. HUNT,
D. C.

Coin, 2½.
Ch'g's ⅝ bill.

45

And upon each and every entry one of the plaintiffs' firm was required to make and subscribe before the collector or his deputy the owner's or consignee's oath, in form like those on the entry per Endymion, a copy of which is marked Exhibit B; and for each stamp so impressed on each and every invoice the defendant, as collector, exacted, and the plaintiffs' firm paid to him, the sum or fee of twenty cents, and for each oath upon an entry subscribed and sworn to as aforesaid the defendant, as collector, exacted, and the plaintiffs' firm paid to him, the sum or fee of twenty cents.

34 The counsel for the plaintiffs, further to maintain and prove the said issue, gave in evidence that in addition to the duties levied and assessed upon the merchandise imported by them as aforesaid, and in addition to the fee of twenty cents for each oath on an entry and twenty cents for each stamp impressed on an invoice, the defendant, as collector, demanded and exacted from the plaintiffs' firm the sum or fee of twenty cents for each permit to land the merchandise embraced in each entry aforesaid upon which the duties had been paid or secured to be paid, said permit being in the form and words of the one given to land the goods embraced in said entry per Endymion, marked Exhibit B, and being signed by both the collector and naval officer as follows, viz:

PORT OF NEW YORK.

To the inspector of the port:

We certify that S. Cochran & Co. has paid, or secured to be paid
35 the duties on merchandise contained in the following packages, in conformity to the entry thereof of this date, which merchandise was imported in the Endymion, , master, from Liverpool. Permission is accordingly hereby given to land the same, viz:

S C = 45 } Two cases linens. 45
= 46 }

Custom-house, Jan'y 19, 1858.

S. P. HUNT,
D'y Collector.

C. S. FRANKLIN,
D'y Naval Officer.

That said fee of twenty cents for each oath, and twenty cents for each stamp, and twenty cents for each permit were exacted by said defendant, as collector, and were paid by plaintiffs' firm with, and at the same time the duties were paid, and without which they could not obtain a permit for the landing and delivery of their goods.

The counsel for the said plaintiffs, further to maintain and prove the said issue on their part, gave in evidence, that upon the entry by the plaint-
36 iffs' firm, at the custom-house, of imported merchandise and the payment of the duties and fees thereon, exacted by the defendant aforesaid, notwithstanding the permit to land said goods, covered all the goods embraced in said entry, certain packages in each invoice, so entered, to wit, one package at least of each invoice, and one package in every ten packages of each invoice, pursuant to the provisions of the statutes in such case made and provided, were, by order of the defendant, as collector, designated upon each invoice, and upon each entry, and also on the permit, to be sent to the public store for examination and appraisement, and the package or packages so designated on said invoice, entry, and permit, were sent by the inspector in charge of the vessel to the public or appraiser's store for examination and appraisement.

After the packages so sent to the public or appraiser's store have been examined and appraised, and report thereof made by the appraiser to the collector, an order was and is required by the plaintiffs' firm
37 from the defendant, as collector, to deliver to the plaintiffs' firm

such examined packages, which order is in the following form, and signed by the collector only, viz:

No. of invoice .]

CUSTOM-HOUSE, NEW YORK,
Collector's Office, Jan'y 21st, 1858.

The storekeeper of the port will deliver the following examined packanes, viz:

(SC) K 45 one case linens, imported by S. Cochran & Co., in the ship Eudymion, , master, from Liverpool.

S. P. HUNT,
Ply Collector.

And for each and every such order, without which said examined package could not be obtained, the defendant, the collector, exacted from plaintiffs' firm, and the latter was required to and did pay to the defendant, the sum or fee of twenty cents.

The counsel for the defendant offered no evidence, but then and there requested the court to direct a verdict for the defendant, upon the
38 ground that the several above-mentioned fees exacted by him were authorized by law and paid without protest.

The court denied this request, to which ruling counsel for defendant then and there duly excepted, which exceptions were duly noted and allowed by the court.

Counsel for plaintiffs conceded that the fee of twenty cents, exacted for the permit to land goods was legal, but contended that there was no warrant of law for the exaction of the fee of twenty cents for the stamp or certificate put on the invoice by defendant, nor for the twenty cents for the jurat to the oath on entry, nor for twenty cents for the order for the delivery of examined packages, and requested the court to direct a verdict for the plaintiffs for amount of such fees exacted, with interest, which request the court granted, to which ruling defendant's counsel then and there duly excepted, which exceptions were duly noted & allowed by the court.

The jury thereupon, by direction of the court rendered a verdict
39 for the plaintiffs for the amount of such fees paid, to wit, for .

And inasmuch as none of the said several matters so produced and given in evidence, and by defendant's counsel aforesaid excepted to, appears by the record of the verdict aforesaid, the said counsel for said defendant did then and there propose his aforesaid exceptions to the decisions, rulings, and direction of the said judge, and requested him to put his seal to his bill of exceptions containing the said several matters so produced and given in evidence, and said decisions, rulings, and direction, as aforesaid, and thereupon the said judge at the request of said counsel for defendant did put his seal hereto and sign the same on the 7th day of October, A. D. 1882.

N. SHIPMAN, *Judge.* [L. S.]

40 EXHIBIT A.

1938.] KINGSKITTLE FIFE, 3*d Nov.*, 1857.

Messrs. Samuel Cochran & Co., New York, bo't of Alex'r Lawson, linen manufacturer:

											d		
S C K	45, 1 box	20.45 in. pillow C. linen	No.	16	m'k'd	No.	8696,	@	13¾			39	17	6
		20.45 " "	"	17	"	"	9691½,	"	15			43	4	4
"	46, 1 box	20 " "	"	19	"	"	11689½,	"	17¼			49	4	0
		20 " "	"	20	"	"	12682,	"	18¾			52	11	5
												£184	17	3
		Less 1/37 £5, for 36 in. miss. & 2½ % £4 10											9	10
												£175	7	3
		Boxes, &c											14	
												£176	1	3

41 One hundred & seventy-six pounds 1/3*d*.

E. D. Ogden.

I certify that this invoice was presented to me On entry 552 G.S.C. Endymion. CUSTOM-HOUSE, NEW YORK. this 19 day of Jan'y, 1858. (S'g'd) S. P. HUNT, *D. C.*

Com. 2½.

15 %.

Ch'g's 5/6 bill.

45.

42 EXHIBIT B.

Import.] *Invoice dated* , 188 .

Entry of merchandise imported by S. Cochrane & Co., in the ship Endymion, whereof Hallett is master, from Liverpool New York, January 19th 1858.

Marks.	Nos.	Packages and contents.		15%.		
S C K	45 46	Two cases linens		£176 1 3		
		Com	2½%	8 0		
		Shipping ch'g's		5 6		
					£180 14 9	
					$874 76	
		One $875---15		$135 25	(Sig'd)	S. COCHRANE & CO.
						Gen. W. B. S.

Paid 19th Jan'y.

W. D. R.

General bond No. ; principal, ; surety, .

43 *Consignee's, importer's, or agent's oath.*

I, , do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of New York are the true and

only invoice and bill of lading by me received of all the goods, wares, and merchandise, imported in the , whereof is master, from , for account of any person whomsoever, for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been, on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly swear that, to the best of my knowledge and belief, , the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost or fair market value, at of the said goods, wares, and merchandise, all charges thereon, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

Sworn to before me this day of , 188 .
E. D. C.

Deputy Collector.

Owner's oath.

I, J. B. Cochran, do solemnly and truly swear, that the entry now delivered by me to the collector of New York contains a just and true account of all the goods, wares, and merchandise imported by or consigned to S. Cochran & Co., in the ship Endymion, Hallett, master, from Liverpool; that the invoice which I now produce contains a just and true account of the actual cost of the said goods, wares, and merchandise, of all the charges thereon, including charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up, and packing; and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me; and that they are in the state in which I actually received them; and that the said invoice and declaration therein are in all respects true, and were made by the person by whom the same purport to have been made. And I do further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the account now produced of the said goods, wares, and mer-

chandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

(S'g'd) J. B. COCHRAN.

Sworn to before me this 19 day of Jan'y, 1858.

(Sig'd) L. P. HUNT,
Deputy Collector.

(Indorsed:) Import. S. Cochran & Co., per Endymion, from Liverpool. Jan'y 19th, 1858. 45.

44 (Endorsed:) O. S., 1865. U. S. circuit court, south. dist. of New York. Thomas Cochran et al., survivors, &c., vs. Augustus Schell. Plaintiffs' and defendant's proposed bill of exceptions. George Bliss, att'y for pl'ffs, 11 Pine street, New York, to S. L. Woodford, U. S. att'y. U. S. circuit court. Filed Oct. 14, 1882. Joseph M. Deuel, clerk.

45 *Bond for damages and costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THOMAS COCHRAN ET AL., SURVIVORS, &C., plaintiffs in error,
vs.
AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, defendant in error.
} O. S., 1865.

Know all men by these presents that we, George Bliss, of the city of New York, and Almon W. Griswold, of the city of New York, are held and firmly bound unto the above-named Augustus Schell in the sum of three hundred and fifty dollars, to be paid to the said Augustus Schell, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 13th day of October, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas the above-named Thomas Cochran et al., survivors, &c., have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Thomas Cochran et al., survivors, shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEORGE BLISS. [L. S.]
ALMON W. GRISWOLD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 13th day of October, 1882, before me.

[L. S.] A. HEYDENREICH,
Notary Public, Richmond Co., N. Y.

46 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Almon W. Griswold and George Bliss, being duly sworn, each for himself deposes and says that he is worth the sum of seven hundred dollars over and above all his just debts and liabilities.

ALMON W. GRISWOLD.
GEORGE BLISS.

Sworn to this 13th day of October, A. D. 1882, before me.
[L. S.]
A. HEYDENREICH,
Notary Public, Richmond Co., N. Y.

(Indorsed:) U. S. circuit court. Thomas Cochran et al., survivors, &c., pl'ffs in error, vs. Augustus Schell, late collector of customs, d'f't in error. O. S., 1865. Bond for damages and costs on appeal to the U. S. Supreme Court. George Bliss, proctor for pl'ffs in error.

The within bond is approved as to form and sufficiency of sureties.
Oct. 14, 1882.

WM. J. WALLACE.

U. S. circuit court. Filed Oct. 14, 1882. Joseph M. Deuel, clerk.

47 *Assignment of errors.*

Supreme Court of the United States.

THOMAS COCHRAN AND WILLIAM BARBOUR, survivors, &c., plaintiffs in error,
vs.
AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, defendant in error.
} O. S., 1865.

Of October term, in the year of our Lord one thousand eight hundred and eighty-two.

Afterwards, to wit, on the third Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, came the said Thomas Cochran and William Barbour, survivors, &c., by George Bliss, their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the said circuit court of the United States for the southern
48 district of New York, at the said time, refused to direct a verdict in favor of the said plaintiffs for the excess of duty above 19 % ad valorem claimed to have been paid on cotton laces and insertings; and that said court granted the request of defendant to instruct the jury that upon this issue plaintiffs could not recover; and that said court thereupon directed the jury to find that the plaintiffs could not recover upon said issue.

And the said Thomas Cochran and William Barbour, survivors, &c., pray that the judgment upon the ruling and instructions of the court aforesaid may be reversed, annulled, and altogether held for naught, and

that they may be restored to all things which they have lost by occasion of the judgment on the aforesaid ruling and instructions.

GEORGE BLISS,
Attorney for Pl'ffs in Error.

49 (Endorsed:) O. S., 1865. Supreme Court of the United States. Thomas Cochran et al., survivors, &c., pl'ffs in error, vs. Augustus Schell, late collector of customs, d'f't in error. Assignment of errors. George Bliss, att'y for pl'ffs in error.

Due service of a copy of within assignment of errors admitted. October 16, 1882.

S. L. WOODFORD,
Attorney for Defendant in Error.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

50 *Joinder in error.*

Supreme Court of the United States.

THOMAS COCHRANE, & WILLIAM BARBOUR, survivors, &c., plaintiffs in error,
against
AUGUSTUS SCHELL, DEFENDANT IN ERROR.

And afterwards, to wit, on the third Monday of said term, before the justices of the said court, the said defendant in error, by Stewart L. Woodford, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid. And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

S. L. WOODFORD,
Attorney for Defendant in Error.

51 (Endorsed:) O. S. 1865. U. S. Supreme Court. Thomas Cochran & ano., &c., plaintiffs in error, versus Augustus Schell, defendant in error. Joinder in error. Stewart L. Woodford, United States attorney, attorney for defendant in error. To George Bliss, attorney for plaintiffs in error.

Due service of a copy of the within is hereby admitted.

GEORGE BLISS,
Att'y for Pl'ffs in Error.

NEW YORK, *October* 16, 1882.

U. S. circuit court. Filed Oct. 16, 1882.

JOSEPH M. DEUEL, *Clerk.*

52 *Assignment of error.*

Supreme Court of the United States.

AUGUSTUS SCHELL, PLAINTIFF IN ERROR,
against
THOMAS COCHRAN & WILLIAM BARBOUR, SURVIVORS, &c., defendants in error.

Afterwards, to wit, on the third Monday of October, in the same term, before the justices of the said court, at the Capitol, in Washington, comes the said plaintiff in error, by S. L. Woodford, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in favor aforesaid given, was given for the said defendants in error against the said plaintiff in error; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants.

53 And the said plaintiff prays that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

S. L. WOODFORD,
Attorney for Plaintiff in Error.

(Endorsed:) O. S. 1865. U. S. Supreme Court. Augustus Schell, plaintiff in error, versus Thomas Cochran & ano., &c., defendants in error. Assignment of error. Stewart L. Woodford, United States attorney, attorney for pl'ff in error. To George Bliss, attorney for def'ts in error.

Due service of a copy of the within is hereby admitted.

GEORGE BLISS,
Att'y for Def'ts in Error.

NEW YORK, *October 16th*, 1882.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

54 *Joinder in error.*

Supreme Court of the United States.

AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, plaintiff in error,
vs.
THOMAS COCHRAN ET AL., SURVIVORS, &C., defendants in error.
O. S. 1865.

And afterwards, to wit, on the third Monday of October, 1882, the said Thomas Cochran et al., survivors, &c., defendants in error, by George Bliss, their attorney, come here into court and say that there is no error either in the record or proceedings aforesaid or in the giving in the judgment aforesaid.

And they pray that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error, in form aforesaid given, may be in all things affirmed, &c.

GEORGE BLISS,
Attorney for Defendants in Error.

55 (Endorsed:) U. S. Supreme Court. Augustus Schell, late collector of customs, pl'ff in error, vs. Thomas Cochran et al., survivors, &c., def'ts in error. O. S. 1865. Joinder in error. George Bliss, att'y for def'ts in error.

Due service of a copy of within is hereby admitted.
Dated October 16th, 1882.

S. L. WOODFORD,
Attorney for Pl'ff in Error.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

56 UNITED STATES OF AMERICA, *ss:*

To Augustus Schell, late collector of customs, defendant in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October, eighteen hundred and eighty-two, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Thomas Cochran et al., survivors, &c., are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, New York, October 14th, 1882.

WM. J. WALLACE,
Circuit Judge.

57 (Indorsed:) O. S. 1865. U. S. Supreme Court. E. & A. A 385. Thomas Cochran et al., survivors, &c., plaintiffs in error, against Augustus Schell, late collector of customs, defendant in error. O. S. 1865. Citation. George Bliss, att'y for pl'ffs in error.

Due service of a copy of within citation is admitted.
Dated Oct. 16, 1882.

S. L. WOODFORD,
Attorney for Defendant in Error.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

58 UNITED STATES OF AMERICA, *ss:*

To Thomas Cochran and William Barbour, survivors, &c., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third

Monday of October, eighteen hundred and eighty-two, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Augustus Schell is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated October 14th, 1882.

WM. J. WALLACE,
Circuit Judge.

59 (Indorsed:) O. S., 1865. U. S. Supreme Court. E. & A. A 385. Augustus Schell, plaintiff in error, against Thomas Cochran & ano., &c., &c., defendants in error. Citation. S. L. Woodford, attorney for plaintiff in error. To George Bliss, attorney for defendants in error.

Due service of a copy of the within citation is hereby admitted this 16th day of October, 1882.

GEORGE BLISS,
Attorney for Def'ts in Error.
A. H.

(Indorsement on cover:) No. 1126. Thomas Cochran et al., survivors, &c., plaintiffs in error, vs. Augustus Schell, late collector of customs. And No. 1127. Augustus Schell, late collector of customs, plaintiff in error, vs. Thomas Cochran & William Barbour, survivors, &c. S. New York C. C. U. S. Filed 30th October, 1882.

OFFICE
FILED
MAR 3 1883

17 Otto 17

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

COCHRAN, &c.,
v.
SCHELL, COLLECTOR,
AND
VICE VERSA.
} Nos. 1126, 1127.

BRIEF FOR THE COLLECTOR.

The *first* of these cases involves a question as to the proper rate of duty upon *cotton laces* and *cotton insertings* imported in the years 1857 to 1861, inclusive; the *second*, a question as to the legality of certain fees charged upon importations at same time.

The briefs of the learned counsel for the importers presents the facts, statutes, and authorities very fully and fairly, and what remains to be done is chiefly to observe upon the extent to which the decisions cited by him bear upon this record.

1. As to the rate of duty:

Schedule C of the act of 1846 imposed a duty of 30 *per cent.* upon "*cotton cords, gimps, and galloons,*" * * * *manufactures of cotton* * * * *if embroidered or tamboured in the loom or otherwise by machinery, or with the needle or other process.*

Schedule D imposed 25 *per centum* upon "*cotton laces, cotton insertings, cotton trimming laces, cotton laces, and braids.* * * * *manufactures composed wholly of cotton not otherwise provided for.*"

Schedule E imposed 20 *per centum* upon "*caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton, worn by men, women, and children,* * * * *velvet in the piece, composed wholly of cotton.*" (9 Stat., 44, &c.)

I believe that the above provisions are all in the act of 1846, which, in terms, concern things made of cotton entirely.

Thereupon the act of 1857 (entitled "An act reducing the duty upon imports, and for other purposes") by its first section, in lieu of the above duties imposed upon the articles included in Schedule C, 24 *per cent.*; upon those in D, 19 *per cent.*, and upon those in E, 15 *per cent.*, "*with such exceptions as are hereinafter made.*"

The second section begins, "*That all manufactures composed wholly of cotton, which are bleached, printed, painted, or dyed, and delaines, shall be transferred to Schedule C.*"

In other words, inasmuch as all manufactures of cotton, excepting such as were *tamboured*, were provided for in the act of 1846, in schedules D and E, it was intended by the act of 1857 that *relatively to other articles in the act*

of 1846 "manufactures composed wholly of cotton" should, in general, be subjected to a *higher* duty.

The question is, whether this phrase includes the *cotton laces* and *cotton insertings* mentioned in the record and also mentioned in Schedule D.

If there were in the act of 1846 such a phrase as "*manufactures composed wholly of cotton*," besides the other phrases "*cotton laces*," &c., &c., it might be admitted that although the former phrase in ordinary usage includes the latter yet that on the face of the act it did not do so there, and consequently that in a later *amendatory* act the same restrictive meaning would be given.

But that is not the case. Where the above phrase occurs in the act of 1846 it is modified by the words "not otherwise provided for," which signify that there were other manufactures wholly of cotton therein provided for; that is, that in the act of 1846 the class *manufactures composed wholly of cotton* was provided for under more than one item. The question is, *where?*

The phrase "*manufactures of cotton*" occurs elsewhere in the act only once, in Schedule C, where it is qualified by the words "*embroidered or tamboured.*" But I submit that the *manufactured* is plainly implied in several other places. "*Cotton* gimps" means gimps *manufactured* of cotton, so "*cotton* laces" and "*cotton* insertings." In these cases the statute designates a manufacture by the material of which it is made, and imposes a duty with reference to manufacture and material both.

If the statute had spoken of *laces* in general, (including therein silk, linen, and cotton laces), there might be

room to doubt whether a later amendatory statute which speaks of manufactures *of cotton* included such laces—in case there were also in the previous statute a number of articles specified as *of cotton*.

In such case it would have appeared in the former act that no stress was laid upon the *material* of which the lace was made, and it might fairly be argued that the denominations spoken of in the later act were only those so denominated in the former. Such seems to be a principle that has received sanction in this court.

But it is to take another and a material step to say that where the previous statute contains precise and careful allusions to *cotton* as the material of which various articles therein mentioned by their respective names, must be manufactured in order to be liable to such and such duties, a subsequent act which groups "all manufactures of cotton" together does not include all of these. It is the material, *the cotton*, which is mentioned in both acts as the ear-mark of the article to be rated.

Nor, as is submitted, is there anything in the words which limit the phrase "*all manufactures composed wholly of cotton*" in the act of 1857, viz, "*which are bleached, printed, painted, or dyed*," to contradict this conclusion, however, it may qualify it. The laces in question were "either bleached or dyed." (Record, folio—). That so compact a statute as that of 1857 added adjectives to "*bleached*" and "*dyed*" but were not then applicable to *laces*, &c., does not signify that it included only such articles as were then sometimes found "*printed*" and "*painted*" as well as

"*bleached*," or "*dyed*"—but, reddendo singula singulis, that it includes all such articles as had been known in commerce under either condition.

I will now examine the authorities cited in the brief of the learned counsel for the importers:

1. Homer *v.* Collector (1 Wall., 486):

There is nothing in the act of 1846 to show that "almonds" were regarded therein as "fruit." In various parts of it, however, *currants*, *figs*, *bananas*, *oranges*, &c., were spoken of, and, besides, "fruit, green or ripe, not otherwise provided for." In that state of the case it was held that the expression "fruit, green, ripe, or dried" in the act of 1857, could not be shown by parol evidence of commercial usage to include "almonds." The view of the court was that the statute of 1846 had not regarded them as "fruit."

If that statute had contained a paragraph in Schedule B, headed "*Fruit:* almonds, figs, currants," &c., the case would have been like the present; and, as I submit, would have been otherwise decided. For it is to be borne in mind that the *laces*, &c., in question are mentioned in the act of 1846 virtually as manufactures-of-cotton.

2. Reiche *v.* Collector (13 Wall., 162):

In that case the act of 1861 had provided that "*animals, living, of all kind; birds, singing and others*," should be exempt; and thereupon the act of 1866 imposed a duty of 20 per cent. upon "*all horses, mules, cattle, sheep, hogs, and other live animals.*"

It was consequently held, reading these acts as in pari materia, that for customs purposes "live animals" do not include "birds."

If the act of 1861 had provided, "*Animals, living of all kinds:* horses, cattle, hogs, birds," &c., I submit that the decision would have been in point here, and would have been otherwise. For in this act of 1846, there is for the articles now in question an implied *heading* to the effect that they belong to the class manufactures-of-cotton.

3. Collector *v.* Fiske (23 Wall., 374):

I do not readily perceive how this case applies to the contention of the importers. The "silk ties" in question there had, as I understand it, never been mentioned in any statute imposing duties. Whether, therefore, they come within the general words of the act of 1861, or of that of 1864, seems not important at present.

4. Movius *v.* Collector (95 U. S., 144):

There an act of 1862, and several preceding had imposed a duty upon "*patent leather.*" It was held, therefore, that the act of 1872 did not include that article in the expression, "*Skins, dressed and finished, of all kinds.*" The view was that "patent leather" had been regarded previously as rather a manufacture of *leather* than of *skins;* in other words, the previous tariff acts had not referred them to *skins* or their class.

This is like Homer *v.* Collector.

5. Collector *v.* Morrison (96 U. S., 108):

I submit that this case also throws no light upon the present controversy, inasmuch as the "*crape veils*" there in question had never been mentioned by name in the acts under consideration. The question here is not, as there and in Fiske's case (above), whether one unenumerated specific article can be included under another which is enumerated, but whether it is incompetent for the legislature to deal with an article by the name of its class in law because in previous statutes in pari materia such article has been mentioned *by its name*, even if in the same connection it was denoted as belonging to that class.

6. Collector *v.* Lahey (96 U. S., 112.)

This also is like Homer *v.* Collector, for there was nothing to show that the legislature had previously treated "*thread laces*" with any reference to the material of which they were made. Upon the contrary, the previous legislation had ignored that element. It was, therefore, to be supposed that in a subsequent statute, making provision for manufactures of a certain material, "thread laces" were not included. The class into which these laces were expressly grouped theretofore (viz, *thread*) was not to be broken up by ambiguous expressions in a later statute.

Upon the whole the principle in Homer *v.* Collector, and Reiche *v.* Smythe, which lead the other cases, requires that in previous statutes some usus loquendi shall have grown up denying to the general expression in question its ordinary significance; whereas here the previous statutes virtually contain dictionary clauses showing that the legislature was advertent to, and acted upon that "ordinary significance."

Besides the case of Reimer *v.* Schell, referred to in the

brief for the importers, I refer to the opinion of Judge Shipman in Borsdorff *v.* Barney, notes of which, received from the office of the United States attorney for southern New York, I append.

2. In No. 1127 the question is whether the certificates in question were such as by law are "required" by merchants who have customs business to transact. It seems by a statement in the brief of the learned counsel (p. —) that they are, and that they always have been, although no fee therefor was charged until about 1850. The test of the validity of that charge is, of course, not the date at which or the reasons for which it was actually first exacted, or that it is exacted only at the port where two-thirds of our total importation occurs, but whether the official papers under consideration were *required* in the course of business. This matter seems not to admit of elaboration.

It is submitted in this case that there is error in the direction of the court below that the jury should find for the plaintiffs.

S. F. PHILLIPS,
Solicitor-General.

BORSDORFF *v.* BARNEY.

The COURT. The proposition is undoubted that "when Congress has designated an article by a specific name and imposed a duty

upon it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it."

The question here is whether this principle is applicable to this case.

The facts are that in the act of July 30, 1846, the plaintiff's importations were classed under Schedule E, in the following terms: "Caps, gloves, &c., stockings, &c., made on frames, composed wholly of cotton, worn by men, women, and children," and were dutiable at 20 per cent. ad valorem.

The first section of the act of March, 1857, reduces the duty upon the articles enumerated in Schedule E to 15 per cent., with such exceptions as hereinafter made; and the second section provides that all manufactures composed wholly of cotton, which are bleached, &c., or dyed, shall be transferred to Schedule C, whereby they were made dutiable at 24 per cent.

Had the first section simply reduced the duty upon the articles in Schedule E to 15 per cent., without stating any exceptions, the quoted proposition would have applied; but Congress said, on the other hand, "All the articles in Schedule C, except as excepted, shall pay 15 per cent.," and the first exception was in regard to manufactures wholly of cotton which had passed beyond the unbleached state. So that the effect of the two sections, so far set forth, as hosiery goods wholly of cotton, made on frames, worn by men, women, and children, shall pay 15 per cent., except such as are bleached, printed, painted, or dyed, which shall pay 24 per cent.

Judge Nelson, in Reimer *v.* Schell (4 Blatchf., 328), answers the argument in regard to particular enumeration in the same way. He says, "It is argued also," &c. (reading).

This case is very different from that of Homer *v.* Collector (1 Wall., 486). (Quotes facts in the statement of facts in the Homer case.)

The point in the court below was whether almonds were commercially a fruit or whether they were nuts, and so not within the exception.

The Supreme Court, through Judge Nelson, said "This inquiry is immaterial, because almonds, *eo nomine*, have been dutiable since 1804, and full effect can be given to the term fruit dried, without the forced construction to bring almonds within it."

In this case full effect cannot be given to the term "All manu-

factures of cotton which are bleached," &c., unless it is made to embrace those manufactures to which the bleaching or printing or dyeing process is applicable.

It is said that the exception applies only to piece goods. I find no adequate grounds for such a distinction in the tariff acts of 1846 and 1847.

Had the expression "manufactures of cotton" which are bleached," &c., been found in the act of 1846 there would have been a far stronger analogy between this case and that of Homer *v.* Collector.

It must not be forgotten that the decision of Judge Nelson in Reimer *v.* Schell, a case precisely the same facts and upon the same clause of the statute, has not been overruled directly, and I think has not been overruled by implication.

The motion of the plaintiff is overruled, and a verdict for the defendant will be directed.

17 Otto 617

In the Supreme Court of the United States,

No. 1126.

THOMAS COCHRAN, et al., Survivors, etc.,

Plaintiffs in Error,

vs.

AUGUSTUS SCHELL, late Collector of Customs,

Defendant in Error.

Error to the Circuit Court of the United States.

BRIEF FOR PLAINTIFFS IN ERROR.

NATIONAL REPUBLICAN PRINT.

Supreme Court of the United States,

No. 1,126.

THOMAS COCHRAN et al., Survivors,
Plaintiffs in Error,

vs.

AUGUSTUS SCHELL, Late Collector of Customs,
Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

This was an action of assumpsit brought—originally in the State Court, but removed into the United States Circuit—by the plaintiffs against the defendant, as collector of customs for the port of New York, to recover, among other monies exacted of them, excess of duties paid under protest on certain "cotton laces and insertings," imported into New York by plaintiffs, between July 1, 1857, and April 8, 1861.

Upon the trial in the circuit before Judge Shipman and a jury, in May last, it appeared that the plaintiffs were compelled to pay 24 per cent. duty on certain cotton laces and insertings, imported and entered by them at the custom-house;

That before paying the duty on said laces they protested in writing against paying more than 19 per cent. duty, claiming that said laces and insertings were specially provided for under schedule D of the tariff act of July 30, 1846, (9 Stat.

at L., 46-7,) as modified by the act of March 3, 1857, (11 Stat. at L., 192,) at a duty of 19 per cent. ad valorem, and no more.

See Record, page 9, folio 28–9.

It was admitted on the trial that plaintiffs' "laces and insertings" were either "bleached" or "dyed;" that prior to about 1879 there were no "printed" or "painted" cotton laces, and from 1850 to 1861 there were many goods composed wholly of cotton and bleached, printed, painted, or dyed, such as calicoes, (prints,) lawns, handkerchiefs, velvets and velveteens, and cotton piece goods generally.

The defendant offered no evidence upon the law and the facts; counsel for the plaintiffs requested the court to rule and instruct the jury to find a verdict for plaintiffs, on the ground that the goods were liable to a duty of 19 per cent. only, under Schedule D, of the act of 1846, as amended by Section 1, of the act of March 30, 1857.

The Court denied this request and instructed the jury that the plaintiffs could not recover, on the ground that the duty was correctly assessed at 24 per cent., under section 2, of the act of March 3, 1857, 11 Stat. at L, 192, as "manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines."

To this ruling the plaintiffs' counsel excepted.

Record page 9–10, folio 29–30.

The error assigned is that the court refused to direct a verdict for the plaintiffs for the excess of duty above 19 per cent. *ad valorem*, claimed to have been paid, under protest, on bleached or dyed "cotton laces and insertings;" but did rule and instruct the jury that upon this issue the plaintiffs could not recover.

I. In Schedule D, of the act of 1846, 9 Stat. at L., 46–47, under which a duty of 25 per cent. is imposed, we find

"Cotton laces, cotton insertings, cotton trimming laces, cotton laces and braids," and in the same schedule are also

embraced "manufactures composed wholly of cotton, not otherwise provided for."

These provisions being in force, the act of March 3, 1857, entitled "*An act reducing the duty on imports*, and for other purposes," was passed, which provides, in Section 1, that there shall thereafter be imposed upon the articles enumerated in Schedules A and B, of the Tariff Act of 1846, a duty of 30 per centum, and upon those enumerated in Schedules C, D, E, F, G, and H, of said act, the duties of 24 per cent., 19 per cent., 15 per cent, 12 per cent., 8 per cent., 4 per cent., respectively, &c., "*with such exceptions as are hereinafter made.*"

11 Stat. at L., 192.

Under this section, reducing the duty on articles embraced in Schedule D, plaintiffs claim that the duty on "cotton laces, cotton insertings, cotton trimming laces, cotton laces and braids," which were specially enumerated, was reduced to 19 per cent.

But the defendant in error claims that cotton laces and insertings, &c., we are rendered liable to the duty of 24 per cent. imposed by Schedule C, because section 2, of the Act of 1857, provided, "*that all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines,*" shall be transferred to Schedule C.

11 Stat. at L., 192.

This is the whole question involved in this portion of the present case, viz: whether cotton laces and insertings, under the act of 1857, we are liable to 24 per cent. duty, as "manufactures composed wholly of cotton," or to 19 per cent. as "cotton laces and insertings;" and this in turn brings up the question, whether the general terms of section 2, of the act of 1857, control the specific enumeration of the article in schedule D.

II. The plaintiffs in error are laboring under some embarrassment in presenting their case to this court. If the decision in Arthur vs. Lahey, 96 U. S., 112, is to be followed, if the court really meant all it said in deciding *that* case, it would seem to be decisive of *this*, and to render extended argument wholly useless.

In that case, the plaintiffs imported certain articles of silk manufacture, known as *Thread Laces*, on which defendant exacted the duty imposed on *manufactures of silk*, viz: 60 per cent. Plaintiffs there claimed that the goods were "*Thread Laces*;" and as such were specifically provided for at 30 per cent. duty, and so not within the general language applicable to manufactures of silk, though they were composed of that material. This court there says:

"It was proved by the witnesses and found by the jury, that although made of silk, the laces in question were commercially known as thread laces.—Whether an article is thread lace, it was shown, depended upon the mode of its manufacture—as upon a cushion, from thread wound on bobbins, moved by hand—and that it was *equally thread lace*, whether made of *cotton*, or silk, and whether white or black * * * and that thread lace made of linen had been practically unknown for many years."

The court, after reviewing all the cases bearing on the question, laid down, "as established, the following propositions:"

"*First.* The commercial designation of an article among traders and importers, where clearly established, fixes its character for the purpose of the tariff laws."

"*Second.* When Congress had designated an article by its *specific* name, and imposed a duty upon it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it."

"*Third.* That the expression 'not otherwise provided for,' in the eighth section of the act of 1864, does not deprive these rules of their ordinary application."

In the case at bar there was no question of fact in controversy. The plaintiff's goods were admitted to be "cotton laces" and "cotton insertings," (page 9, folio 28, 29, of Record.) This admission is in accordance with the declaration of this court in Arthur *vs.* Lahey, that "there are articles commercially known as *silk* laces, and articles commercially known as *cotton* laces. * * * * These distinctions are also well known and recognized in the tariff laws of the country. This court then adds: "In the years mentioned, acts were passed in which the articles were named as here stated with the different duties upon each"

"July 30th, 1846.
"Cotton laces at ..... 25 *per centum*
"Thread laces at ..... 20 " "
"9 Stat. at L., pages 46–7.

"March 3d, 1857.
"*Cotton laces* at ..... 19 *per centum*
"Thread laces at ..... 15 " "
"11 Stat. at L., page 192.

"March 2d, 1861.
"Silk laces at ..... 30 *per centum*
"Cotton laces at ..... 20 " "
"Thread laces at ..... 20 " "
"Cotton lace, colored, at ..... 30 " "
"12 Stat. at L., pages, 186, 189, 190, 191.

"July 14, 1862.
"Thread laces at ..... 30 *per centum*
"Cotton laces at ..... 25 " "
"12 Stat. at L., pages 550, 556, sec. 6, 13.

"June 30, 1864.
"Silk laces at ..... 60 *per centum*
"Cotton laces at ..... 35 " "
"13 Stat. at L., pages 209, 210.

"Revised Statutes.

"Cotton lace, colored, at ..... 35 *per centum*
"Cotton lace at ..... 35 " "
"Thread lace at ..... 30 " "
"Silk laces at ..... 60 " "

"Rev. St., pages 464, 466, 472.
"do. February 8th, 1875.
"18 St., page 307."

The court might have commenced its citations of statutes imposing duties on thread and cotton laces, by name, with the act of "August 30, 1842, which provides for

"Thread laces at ..... 15 *per centum*
"Cotton laces at ..... 20 " "
"5 Stat. at L., page 549.

It will thus be seen that in arriving at its decision in that case, this court cited and drew its argument from the different statutes imposing specific duties on "*cotton laces*" *by name*, and stated that under the act of March 3, 1857, they were liable to a duty of 19 per cent. (96 U. S., page 114.) *That* is precisely what the plaintiffs claim, and *all* that they claim in this case.

If, therefore, it is assumed, as we must assume, that the court meant all it there said, and intends to stand by the broad, well-defined propositions laid down in that case, then it would seem a useless waste of its time for counsel to enlarge further. The decision of the court below must, in such case, be reversed.

If, on the other hand, the statement of this court in Lahey *vs.* Arthur, that the act of 1857 provided a duty of 19 per cent. on all cotton laces is to be disregarded, and the structure built up on the statutes cited as the basis of that decision topples over, then the case at bar must be argued without any special reference to the case of Arthur *vs.* Lahey more than to any other case bearing on the question.

III. Whatever construction the court may place on the language of the second section of the act of March 3, 1857, it seems clear that it cannot, consistently with principle or decisions, hold that it is broad enough to carry "cotton laces and cotton insertings" into schedule C, and impose 24 per cent. duty on them on the mere ground that they are "manufactures of cotton, *bleached or dyed*," for these same goods are positively, *specifically*, and unconditionally provided for *by name* in schedule D as "cotton laces, cotton insertings," &c., as they have been in all the seven acts hereinbefore referred to, from 1842 down to 1875. Such a construction cannot be given without overruling a long series of decisions of this court, of which it happens that the most recent are in their principles, most directly applicable.

IV. The case of Arthur *vs.* Rheims, (96 U. S., 143,) is directly in point.

Rheims imported into New York a quantity of artificial flowers, composed of iron, paper, wire and cotton, on which the collector imposed a duty of 50 per cent. *ad valorem* under section 12, of the act of 1864.

Rheims claimed that these goods were entitled to a deduction of ten per centum, under section 2, of the act of June 9th, 1872, which says:

"On all manufactures of cotton, of which cotton is a component of chief value, on all iron and steel, and all manufactures of iron and steel, of which such metals, or either of them, shall be the component part of chief value, excepting cotton machinery."

This Court says:

"The general words of the act of 1872, no doubt, are sufficiently comprehensive to embrace the case before us. Artificial flowers are a manufacture, of which cotton is the chief component part, and were that all, would be entitled to the deduction asked for. But it is true, also, that they are dutiable under the law of 1864, not as manufactures of cotton, but specially, *eo nomine*, as artificial flowers.

"It has been held, in many cases, as that of "almonds, and dried fruit," the "Canary birds," and at the present term in the case of "thread laces," and of "chocolate," that when a certain article is intended to be made dutiable by its specific designation, it will not be affected by the general words of the same or another statute, which would otherwise embrace it.

"This rule applies both to statutes reducing and to statutes increasing duties. Giving it such application here, we must hold that 'artificial flowers' are not entitled to be classed as a manufacture of cotton, which is entitled to the reduction provided for by the act of 1872."

V. The purpose and object of Congress in making the exception contained in section 2 of the act of 1857, is clear if we go back and examine the prior tariff acts covering such goods. The act of 1832, sec. 3, 4 Stat. at L., 583, provides,

"That all manufactures of cotton, or of which cotton shall be a *component part*, *not dyed*, *colored*, *printed*, *or stained*, not exceeding in value *thirty cents a square yard*, shall be valued at *thirty cents* a square yard, and if *dyed*, *colored*, *printed*, *or stained*, in whole or in part, not exceeding in value thirty-five cents the square yard, shall be valued at thirty-five cents per square yard," on which an *ad valorem* duty of 35 per cent. was imposed.

It will be seen that this section embraces cotton and worsted goods, as well as those of all cotton. Then comes the act of August 30th, 1842, 5 Stat. at L., 549, sec. 2 of which provides that

"On all manufactures of cotton or of which *cotton shall be a component part*, not otherwise specified, a duty of *thirty per centum ad valorem*, (excepting such cotton twist, yarn, and thread, and such other articles as are herein provided for): *Provided*, That all manufactures of COTTON, or of which cotton shall be a component part, *not dyed*, *colored*, *printed or stained*, not exceeding *twenty cents* a square yard shall be valued at twenty cents a square yard; *and if dyed*, *printed*, *colored*, *or stained*, in whole or in part, not exceeding in value *thirty cents* the square yard, shall be valued at *thirty cents* the square yard, excepting velvets, cords, moleskins, etc., etc., etc., shall be thirty-five cents."

It will be observed that both these acts provide for the payment of duty on the *square yard* value of these goods—the latter act making a discrimination of one-third in the amount of duties between those which are *undyed*, *etc.*, and those which are dyed; and, as a matter of course, the provisions of these acts did not, and could not have been intended to apply to any manufactures of cotton, except such as could be, and usually are, valued by the *square yard*—such as piece goods—calicoes (prints), lawns, muslins, handkerchiefs, and piece goods generally. That is made apparent from the fact that the goods mentioned in the first part of the section in the act of 1842, composed wholly or in part of *cotton*, are not to be valued on the square yard basis.

It certainly was not intended to apply to *thread or cotton laces and insertings*, because they were specifically provided for in the first section of the same act of 1842, subdivision 9, as follows: "On all *thread laces* and insertings, 15 per cent. *ad valorem;* on *cotton laces*, *quillings*, and *insertings*, usually known as trimming laces, and on bobinet laces of cotton, 20 per cent. *ad valorem.*"

The provisions just cited were in force when the act of 1846 was passed, which is entitled an act "reducing the duty on imports, and for other purposes," section 1 of which provides, "that in lieu of the duties heretofore imposed by law on the *articles hereinafter mentioned*, and on such as are now *exempt* from duty, there shall be levied, collected, and paid on the goods, wares, and merchandise herein enumerated and provided for, &c., &c.

Schedule D, of the act of 1846, in providing for "manufactures composed wholly of cotton, not otherwise provided for," seems to have ignored the discrimination between *undyed* and *dyed* goods, which the above acts of 1832 and 1842 had made, and to have simply provided that such "manufactures composed wholly or in part of cotton, not otherwise provided for," meaning, as it seems, the *square yard* or *piece goods* mentioned in the act of 1842, whether undyed or dyed, shall pay a duty of 25 per cent. *ad valorem.*

In Reiche *vs.* Smythe, (13 Wall., 164,) this principle of reference to a former statute to ascertain what was intended was sustained. The case was this: The 23d section of the act of March 2, 1861, provides that "animals living, of all kinds, birds singing and others, land and water fowls," shall be exempt from duty.

The act of May, 1866, provided that a duty of 20 per cent. *ad valorem* should be imposed on all horses, mules, cattle, sheep, hogs, *and other live* animals." After the passage of this act the collector exacted 20 per cent. duty on a lot of canary birds, which was paid under protest.

The court said: "The act of 1866 is comprehensive enough to include canary birds, and if there had been no previous legislation there would be justification for the position that Congress did not intend to narrow the meaning of the words. The act of 1861 intended birds to be admitted free of duty, and the act of 1866 must be limited to animals, *ejusdem generis*, with cattle, sheep, and horses. The two acts are *in pari materia*, both remaining in force; that of 1861, admitting birds free of duty, and that of 1866, imposing the duty on horses and like animals notwithstanding the general terms of the latter."

The court adds, "it is fair to presume in case a special meaning were attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject matter."

Now, appplying this principle to the case at bar, under schedule D, of act of 1846, "cotton laces, cotton insertings, cotton trimming laces, cotton laces and braids" are *specifically* provided for by name at 25 per cent. duty, in the same way as they had been *specifically* provided for at 20 per cent. under the 1st section of the act of 1842, 5 Stat. at L. 549; while under schedule E, act of 1846, at 20 per cent. are

"*Caps, gloves, leggings, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton, worn by men,*

women and children, * * "*gunny cloths*," * * * *thread laces and insertings*." (Thread laces are composed of cotton or silk. See Arthur vs. Lahey, 96 U. S. R., 112.) "Velvet in the piece, composed wholly of cotton".

The foregoing shows the *general* provisions for duties on "manufactures composed wholly of cotton," as well as the various articles composed of cotton which were *specifically* provided for *by name* in the act of 1846, in force at the time the tariff act of 1857, was passed.

Now, what object had Congress in view, in 1857, in making this transfer to schedule C, of "*all manufactures composed wholly of cotton which are bleached, printed, painted or dyed, and delaines?*" And what was intended to be embraced in it?

The plaintiffs in error claim it was simply to restore the discrimination between *undyed* and *dyed* "manufactures composed wholly or in part of cotton," which had been provided for, first, in act of 1832, and again in the act of 1842, but which the act of 1846 had ignored or overridden, and thus to provide, that those goods which had been subjected to the process of "bleaching, printing, painting or dyeing," should be subjected to the increased rate of duty by transferring them to schedule C in this.

This provision would restore the discrimination—the protection which the acts of 1832 and 1842 gave to our "print works," establishments where all the different processes of bleaching, printing, painting and dyeing of piece goods were performed, and would leave all the "*unbleached*" and "*undyed*" "manufactures composed wholly of cotton," capable of *square yard valuation*, and all the various manufactures of cotton specially provided for by name, whether dyed or undyed, undisturbed in their original schedules D and E.

Congress had apparently one other object in view in framing this 2nd section of the act of 1857, and that was to protect a new industry then just established in this country, viz: the manufacture of "*delaines*"—a cotton and worsted fabric—

hence it singled out of the "manufactures of worsted, or of which worsted shall be a component material," provided for in schedule D, this new fabric, and transferred that also to schedule C.

Having these two special objects in view, how could it more aptly define its intentions than by the concise language employed? "*All* manufactures composed wholly of cotton, *which* are bleached, printed, painted or dyed, and *delaines*," in the light of the previous legislation above referred to on the subject, means the same as if it read:

"Such of the 'manufactures composed wholly of cotton'—now embraced in schedule D—'as are *bleached*, *printed*, *painted or dyed*, *and delaines*,' shall be transferred to schedule C."

This, we submit, is the natural import of the language employed, and this construction would leave unbleached cottons under the *general* provision in schedule D, covering "manufactures composed wholly of cotton" undisturbed, while these four descriptions or kinds of cottons, viz., bleached, printed, painted or dyed goods, and also the single article of delaine, composed of cotton and worsted, and which is here mentioned for the first time in the tariff acts of the United States—are transferred to schedule C. And it would also leave undisturbed the various other manufactures of cotton which were specifically provided for by name in schedules D and E of the act of 1846, as noted above.

On the other hand, if the construction claimed by defendant, and given by the court below, is correct, and the general provision or language, "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines," is to prevail over the specific duties provided for these different articles, then not only "cotton laces and insertings" in schedule D are transferred to schedule C, but *caps*, *gloves*, *leggins*, *mits*, *socks*, *stockings*, *wove shirts and drawers*, *made on frames*, composed *wholly of cotton*" and "thread laces and insertings," when composed of

cotton, as they sometimes are—see Arthur *vs.* Lahey, 96 U. S., 112—and "*velvets* in the piece, composed wholly of cotton," in schedule E, are all transferred to schedule C. In other words, these articles of merchandise specifically provided for by name, at a duty of 20 per cent. *ad valorem* under the act of 1846, instead of being *reduced* to 15 per cent., are robbed of their respective commercial designations, of their specific names, and thrust into the cotton schedule C, at an *increased* duty of 24 per cent., under the act of 1857, the title of which declares it to be "An act *reducing* the duty on imports, &c., &c."

VI. The attempt may be made to distinguish the case at bar from that of Arthur *vs.* Lahey and Homer *vs.* The Collector, and the other cases in *this* Court. It will, perhaps, be claimed, that the 2nd section of the act of 1857, which provides that "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines," transfers to schedule C, and so renders liable to pay 24 per cent. duty, *bleached* and *dyed* cotton laces and insertings, but that this leaves the *unbleached* and *undyed* article, if any such are ever imported, undisturbed under schedule D and liable to 19 per cent. duty.

In other words, while the *bleached*, *printed*, *painted* or *dyed* cotton laces and insertings lose their commercial designation and identity as cotton laces, and must pay 24 per cent. duty, as manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, under schedule C, the *unbleached* article—if there is any such—retains its commercial designation and identity as "cotton laces and insertings," and retains its place under schedule D, where it is liable to only 19 per cent. duty.

And so with bleached or dyed "caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton," and bleached or dyed "thread laces and insertings," and bleached or dyed "velvet in the piece, composed wholly of cotton," they are deprived of their

designation and identity, and thrust into the cotton schedule C, liable to 24 per cent. duty, as manufactures composed wholly of cotton, while these same articles, when *unbleached* or *undyed*, if they are ever imported in that condition, are liable to 15 per cent. duty imposed on them by their respective *specific names;* so that, in a qualified form, effect would be given to all the provisions of the statute imposing duties on "cotton laces and insertings," and on "cotton hosiery," and on "thread laces and insertings, made of cotton," and on "velvet in the piece composed wholly of cotton."

But I apprehend this court will not take that view of the law.

If it holds that bleached or dyed cotton laces and insertings can for any purpose be deprived of their commercial designation and considered as "*manufactures composed wholly of cotton which are bleached, printed* or dyed," it must also hold that, when unbleached or undyed, if they ever came in that condition, they are still "manufactures composed wholly of cotton, unbleached and undyed." And so with unbleached or undyed caps, gloves, leggins, &c., &c., composed wholly of cotton, and unbleached thread laces composed of cotton, and unbleached velvets in the piece composed of cotton, if they ever come in that condition. The court must hold that they are still manufactures composed wholly of cotton unbleached and undyed, and as such liable to 19 per cent., under schedule D.

The Government's theory that the unbleached and undyed articles retain their respective distinctive names and are liable to the duty imposed on them as such will not work in all cases. Take, for instance, "velvet in the piece, composed wholly of cotton," it is always "bleached, printed, painted or dyed," and at that time was never imported in any other form; hence there would be no form or condition of cotton velvet that would not be covered by the term "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed." There would be no

"velvet in the piece composed wholly of cotton," to which the specific duty provided for in that act would apply.

So with thread laces, when composed of cotton; if bleached, printed, painted or dyed, they would pay 24 per cent. as "manufactures composed wholly of cotton, which are bleached, printed, painted or dyed." Though it does not so appear in this case, it is nevertheless a fact that cotton thread laces are always bleached, are made of bleached cotton thread and are never imported in an unbleached condition; hence there would be no thread lace to which the specific duty of 15 per cent. would apply.

VII. We find but one case in all the Federal Reports which sustains the views of the law taken by the Court below in this case, and that is the case of Reimer vs. Schell, 4 Blatch., 328, and it was upon *that* case that Judge Shipman based his ruling in this.

The defendant in that case had exacted 24 per cent. duty, under the Tariff Act of 1857, on "caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton, &c., &c.," which were embraced in schedule E, and liable to 20 per cent. duty, under the act of 1846, and the plaintiffs in that action claimed that the first section of the act of March 3d, 1857, reduced the duty on articles in schedule E, of the act of 1846, to 15 per cent. "with such exceptions as are hereinafter made."

The second section provides that "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines, shall be transferred to schedule C."

The court, Nelson, Justice in that case says: "The controversy is whether the goods in question are subject to a duty of 15 per cent. or 24 per cent. It is claimed, on the part of the importers, that the goods remain under schedule E, of the Act of 1846, and are of course, subject only to the reduced rate of duty of 15 per cent. while the government claim that they have been transferred by the language used in the second section of the act

of 1857, to schedule C, and are therefore subject to the 24 per cent. duty. *I think the latter the sounder construction of the act.* The goods fall directly within the description '*all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed.*' The legislature *designates the articles by special description*, as contra-distinguished from a *designation by a commercial name*; and the proper enquiry is as to their qualities and characteristics, with a view to ascertain if they came within the description. If they do, "no argument can take them out of the rate of duty which has been imposed."

Because that case does not appear to have been expressly cited and overruled by *this* court, it was taken by Judge Shipman to be the law, at least in the Second Circuit, and he followed it, or rather said: "This case will go to the Supreme Court *any way*, and for the purposes of this trial I will follow the decision in Reimer *vs.* Schell."

But that case stands isolated and alone, and is in direct conflict with all the decisions of this court on the subject, beginning with Homer *vs.* Collector, 1 Wall, 486, and coming down through Reiche *vs.* Smythe, 13 *id.*, 162, Smythe *vs.* Fisk *et al.*, 23 *id.*, 374, Movias *vs.* Arthur, 95 U. S., 144, Arthur *vs.* Morrison, 96 U. S., 108, and Arthur *vs.* Lahey, 96 *id.*, 112, where all these cases are reviewed and approved.

So far as I have been able to discover, Reimer *vs.* Schell has never been cited or referred to in any case in this or any other court, either by counsel or court, except on the trial of this case below.

At the time of the decision in Reimer *vs.* Schell there had been no decisions of this court to guide or assist the learned judge in disposing of it. The question was a new one. Although Reimer *vs.* Schell was decided in May, 1859, it was not reported till 1868, nine years afterwards. About that time the question came up in Boston, and Judges Curtis and Sprague were divided in opinion.

In 1863 that case, Homer *vs.* The Collector of Boston, 1 Wall, 486, was decided by this court—the opinion was written by Judge Nelson—in which the doctrine is distinctly

and unqualifiedly laid down that where an article of merchandise is provided for at a given rate of duty by a *specific* name or designation, and is also covered by a *general* provision, at a different rate, duty is to be assessed on the article according to its special or *specific* name, and not under the *general* provision.

And because the learned judge who delivered the opinion of this court in that case made no reference to the case of Reimer *vs.* Schell, which he had himself decided in the Second Circuit, four years before, it was claimed by the Government on the trial below of this case to be evidence that this court did not intend in Homer *vs.* The Collector to overrule or criticise Reimer *vs.* Schell.

It is doubtful if at the time Homer *vs.* The Collector was decided this court had ever heard of the case of Reimer *vs.* Schell, although it had been decided four years previously, for, as we have said, it had not then been reported, and was not reported until five years later, in 1868. And if this court has *ever* heard of the case, at any time, it has maintained an ominous silence touching it, as I have no where seen it cited in this or any other court.

Homer vs. *The Collector* was really the *first*, the *pioneer* case, in which this question was squarely raised in this court, and it unquestionably received a *consideration* here which had not been bestowed on the case of Reimer *vs.* Schell, in the Circuit Court.

In Reimer *vs.* Schell the learned judge says, after stating the question:

"The goods fall directly within the description, all manufactures composed wholly of cotton," &c.

Further on he says:

"The first section of the act of 1857, which reduced the rate of duty upon goods under schedule E, in the act of 1846, contemplated exceptions," &c., &c. * * * "These exceptions are found in the next section, and the very first one is

the one in question. *All manufactures composed wholly of cotton which are bleached, printed, painted, or dyed, which articles as thus described, under whatever schedule arranged in the act of 1846, are transferred to schedule C* and subjected to a duty of twenty-four per cent."

Now, this same judge, in Homer *vs.* The Collector, speaking for this court, says:

"*The argument is that almonds are dried fruit, and, hence, are provided for in the second section of the act of 1857, and evidence was offered on the trial to show that such was the commercial sense of the term. But this inquiry has nothing to do with the question, and, indeed, it is difficult to see how any such inquiry could take place, except as a matter of curiosity and speculation, * * * as duty has been imposed on almonds,* eo nomine, *almost immemorially. * * * The article, as we have seen, is charged* SPECIFICALLY *with a duty of 40 per cent.* ad valorem *in the act of 1846, and is not* NAMED in the changes of the act of 1857."

Applying this decision, in Homer *vs.* Collector, to the case of Reimer *vs.* Schell, the Court would say:

"The argument is that 'caps, gloves, leggings, mits, socks, stockings, wove shirts and drawers, &c., &c., composed wholly of cotton' are 'manufactures composed wholly of cotton,'" and hence are provided for as such, under schedule C, at 24 per cent. But this has nothing to do with the question. The articles, as we have seen, were charged '*specifically*"' in the act of 1846, in schedule F, at 20 per cent, and are not *named* in the *changes* of the act of 1857.

I have dwelt upon the case of *Reimer* vs. *Schell*, because of the peculiar position it seemingly occupies, if not as an authority against us, yet as a sort of stumbling-block—a *bête noir*—in the Second Circuit—though it would appear wholly unnecessary to do so in the case at bar, unless this court is prepared to reconsider and reverse all its decisions on this point, and especially that in the case of Arthur *vs.*

Lahey, already referred to, which is seemingly decisive of this case.

VIII. The plaintiffs in error submit that upon the case they have presented the decision of the court below on this part of the case should be reversed.

GEORGE BLISS.

OFFICE SUPREME COURT U. S.
MAR 13 1886

17 Otto 617

Supreme Court of the United States.

No. 1127.

AUGUSTUS SCHELL,

Plaintiffs in Error,

vs.

THOMAS COCHRAN, Survivor, etc.,

Defendant in Error.

BRIEF FOR DEFENDANTS IN ERROR.

NATIONAL REPUBLICAN PRINT.

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NATIONAL REPUBLICAN PRINT.

Supreme Court of the United States,

No. 1127.

AUGUSTUS SCHELL, *Plaintiff in Error*,

vs.

THOMAS COCHRAN, Survivor, etc., *Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR.

In this branch of the case the question in dispute is as to the right of the Collector at New York to require the payment of certain fees on the entry of goods. Defendants in error having paid under compulsion fees which they claim were illegal brought suit to recover them. At the trial a verdict was by direction of the court rendered for defendants in error. To reverse this decision a writ of error was taken by the Government.

The question can be best explained to the court by describing the manner in which entries were made at the New York Custom House at the time the fees were exacted, say from 1857 to 1861.

The merchant first presented to the entry clerk his *invoice* on which the latter stamped with a rubber or metal stamp a certificate like that found at folio 33 of the Record, stating the invoice had been "presented to me."

He then presented his *entry* to a deputy collector, and having subscribed the oath on it, the latter swore him.

Certain packages were then designated on the invoice and

entry, by the deputy collector, for examination by the Appraisers (the law required at least one in ten, sec. 21 of act of 1842, 5 Stat. at L., 565.)

This being done, the merchant took the invoice and entry to the Cashier and paid the duty, and at the same time he was required to pay 20 cents for each stamp impressed on an invoice, and 20 cents for each oath on an entry.

Upon the payment of the duties and these fees, a permit was granted, for which a fee of 20 cents was also paid, as described in the Record—page 11, folio 35—directing the inspector, in charge of the ship, to land—to deliver the goods described in it, viz: [S. C. K.] No. 45, No. 46, two cases linens.

These packages were delivered at the vessel's dock—No. 46 was delivered to the merchant, but No. 45, having been designated on the invoice, and also on the entry, and on the permit, to be sent to the Public Store for appraisement, was not delivered to the merchant, but was ordered to be delivered to the Public Store to enable the appraisers to test the correctness of the invoice; and, after examination by the appraisers, it could not be had by the importer without an order from the collector to deliver. See page 12, folio 37.

For this order the importer was charged 20 cents, although he had already paid twenty cents for his permit for the two cases—No. 45 and No. 46 being included in that permit—but No. 45 having been sent to the Public Store for examination and appraisement, he was compelled to pay another fee for his permit before he could get that case.

The following fees were demanded and paid on every entry, and without the payment of which by the merchant he could not obtain the permit to land and deliver his goods, viz:

For permit (see page 11, folio 35 of Record). . . .20 cents
For each stamp (some invoices are stamped twice, once for a consumption and once for a warehouse entry). . . . . .20 cents

For each oath (an entry frequently has two oaths, an owner's and a consignee's oath)..... .. 20 cents
For order on storekeeper to deliver examined packages .... 20 cents

It will be seen, therefore, that at least eighty cents were exacted on every entry and upon some entries two or three times eighty cents—depending on the number of invoices embraced in an entry, each invoice being stamped.

Now, of *these* fees the defendants in error claim, none except that for the *permit* to land are authorized by law, and were never exacted at any Custom House in the United States except New York, and never exacted there till January 15, 1850, more than fifty years after the date of the act of 1799, under the second section of which authority is claimed for their exaction now—as we shall see hereafter.

(See act of 2d March, 1799, Sec. 2, chap. 23, 1 Stat. at L. 706.)

This act is entitled "An Act to establish the compensation of the officers employed in the collection of duties on imports and tonnage, and for other purposes," and section 2 reads as follows:

"SEC. 2. *And be it further enacted*, That from and after the last day of March next, *and in lieu of the fees* and *emoluments heretofore* established, there shall be allowed and paid for the use of the collectors, naval officers and surveyors, appointed and to be appointed in pursuance of law, *the fees following;* that is to say; to each collector for every entrance of any ship or vessel of one hundred tons burthen and upwards, two dollars and an half; for every clearance of any ship or vessel of one hundred tons burthen and upwards, two dollars and an half; for every entrance of any ship or vessel under the burthen of one hundred tons, one dollar and an half; for every clearance of any ship or vessel under one hundred tons burthen, one dollar and an half; for every post entry two dollars; *for every permit to land goods, twenty cents;* for every bond taken officially, forty cents; for every permit

to load goods for exportation, which are entitled to drawback, thirty cents; *for every debenture or other official certificate, twenty cents:* for every bill of health, twenty cents; *for every official document* (registers excepted) *required by any merchant, owner or master of any ship or vessel not before enumerated, twenty cents.*" * * * * *

The provisions of this act are embodied in section 2654 of the U. S. Revised Statutes and constitute the law on the subject in force to-day, as follows:

"There shall be allowed and paid for the use of the collectors the following fees:

"1st. To each collector for every entrance of any vessel of one hundred tons burden and upwards, two dollars and a half.

"2d. For every clearance of any vessel of one hundred tons burden and upwards two dollars and a half.

"3d. For every entrance of any vessel under the burden of one hundred tons, one dollar and a half.

"4th. For every clearance of any vessel under one hundred tons burden, one dollar and a half.

"5th. For every post entry, two dollars.

"6th. For every permit to land goods, twenty cents.

"7th. For every bond taken officially, forty cents.

"8th. For every permit to load goods for exportation, which are entitled to drawback, thirty cents.

"9th. For every debenture or other official certificate, twenty cents.

"10th. For every bill of health, twenty cents.

"11th. For every *official document* (registers excepted) *required* by any merchant, owner or master of any vessel, not elsewhere enumerated, twenty cents."

The fee of twenty cents for every "permit to land goods" is legal. The law also allows twenty cents for "every debenture or other *official* certificate," and also twenty cents for every *official document* (registers excepted) *required* by any merchant, owner or master of any ship or vessel.

The only authority for charging the fees exacted by the plaintiff in error must be found in the provisions just cited. No fees are chargeable, as a matter of course, except these es-

tablished by law. See Ogden *vs.* Maxwell, 3 Blatch, 322, where the whole question is considered.

It cannot be claimed that a jurat to an oath, or a stamp on an invoice is either "an official certificate" or "an official document" required by any merchant.

Besides section 36 of the act of 1799, ch. 22, prescribes the form of an entry of imported merchandise, which is to be made under oath, and the form of the oath is also prescribed and this oath must be taken before the collector. See 1 Stat. at L. 656–7.

If a fee was to be allowed the collector for this ~~it~~ would not have been enumerated among the other fees mentioned in the 2d section of the act cited.

The record states that the stamp on the invoice was placed there by the collector "for the convenience and security of himself and the Government."

See page 10, folio 32, of record.

The order to deliver examined packages sent to Appraisers or Public Store is not given for the convenience of the merchant, but for the convenience and accommodation of the collector or the Government. It is not an *official document*, as we shall presently see, for it is not countersigned by the Naval Officer

The act of March 2, 1799, chap. 22, sec. 21, 1st Stat. p. 642, defines the duties of naval officer as follows:

"The naval officer shall receive copies of all manifests and entries, and shall, together with the collector, estimate the duties on all goods, wares, and merchandise subject to duty, (and no duties shall be received without such estimate,) and shall keep a separate record thereof, *and shall countersign all permits, clearances, certificates, debentures, and other documents to be granted by the collector.*" * * *

The provisions of this section as to the duties of naval officer are embodied in the United States Statutes, section 2,626.

The record shows that the "permit" is the only paper ("certificate, document, or order") in question signed by the collector or deputy collector which was in fact *countersigned by the naval officer*, and as the law *requires* the naval officer to *countersign all permits, clearances, certificates, debentures*, and *other documents* to be *granted* by the collector, it follows that the "*permit*" is the only paper involved in this case which can be called a "certificate" or "document" for which the collector had a right to charge twenty cents.

The act of March 2, 1799, ch. 22, prescribes forms of all these *certificates, permits, clearances, debentures*, and *other documents* which are to be countersigned by the naval officer. In section 49, 1 Stat. at L., 664–5, the form of a permit will be found. This, as all the others are, is in the plural.

It begins with "*we certify.*" "We," the collector and naval officer. (See page 11, folio 35 of record.) The other alleged certificate on the invoice says: "*I certify* that this invoice was presented *to me.*"

If he chose to do so, for his own convenience, the collector might stamp a like certificate on the *entry*, using the word *entry* in place of invoice, and he might also put a like stamp on each bill of lading presented him on entry, and he would have the same right to charge twenty cents for every such stamp as he had to charge for the stamp on the invoice. It would not be "*an official certificate* or an *official document required by any* merchant."

Whatever this stamp or certificate on the invoice may be, it was not a stamp, certificate, or document *required* by any merchant, because the merchant did not *receive* it—did not *have* it. It never went into his possession, but went directly on file in the custom-house, and remained there in the custody of the collector. Supposing the collector had chosen to stamp on the invoice, "I certify that this invoice was this day *filed by me*," he might as well certify *that* as to certify that it was this day *presented to me.*

The "official certificate" or "official document" required by any merchant contemplated some certificate or document which the merchant was to *receive*—which he was to take and carry away as he received and carried away a *permit*.

Now the order to deliver the examined package, found on page 12 folio 37 of Record, is not an order or document mentioned or provided for in the acts cited, or in any statute of the United States. It does not pretend to *certify anything*. It does not say "the duties have been paid or secured to be paid." The collector and naval officer together had already formally *certified to that*, in the permit granted two days before. See Permit, page 11 folio 35 of Record.

This order is simply a *direction* to the storekeeper, to deliver this package, which was embraced in the original permit to land, but which was sent in the first instance to the public store to enable the appraisers to perform their duty of examining the goods and verifying the value. That being done, and the appraisers having reported to the collectors that the value was correct, &c., &c., the latter says to the merchant, now you can have that case also, and here is an order for it, signed by the collector *only*. (See page 12 folio 37.

Let us now briefly notice the cause of this new construction of an old law and this departure from a long established usage, as they are narrated by Hugh Maxwell, esq., Collector of Customs in the following letter to the Secretary of the Treasurer.

COLLECTOR'S OFFICE, CUSTOM HOUSE,
NEW YORK, *July* 15, 1852.

SIR: Your letter of the 18th instant, with application of H. & F. W. Meyer for return of fees collected from them since January, 1850, is received.

In reply, I have the honor to state that in consequence of the embarrassments existing at that time and of circular instructions, dated December 31, 1849, a change was made in our practice under the following order dated January 15th. "To the Cashier: Hereafter you will receive twenty cents fees for all orders, permits and other documents, requiring the collector's signature, including certificates on

invoice and shipping manifests and for every jurat or verification on oath.

This direction was made upon consultation with the Commissioner of Customs, who was here at the time, my Deputies and Auditor all agreeing that the charges were authorized under the provisions of the second section of the act 1799, entitled, "An act to establish the compensation of officers," under the terms for "every debenture or other official certificate." also for every official document required by any merchant, owner or master of any ship or vessel not before enumerated."

The change of practice was reported officially to the Commissioner of Customs, with a list of fees and charges made under date of January 18, 1851.

The charges now made are, for stamp upon invoice, for jurat of deputy collector, for order to send goods for examination to No. 12 Broad street, and to deliver goods after examination.

The statement of Mr. Russell is correct as to the practice in this office of entering goods and passing entries.

If it be true that at other ports these charges are not made, our merchants are subject to a charge of 60 cents at least, and sometimes 80 cents upon each entry, not charged in other places. As to the fees, for stamps upon invoices and orders, it may be a question whether merchants should be charged with them. inasmuch as stamps are employed for greater caution to prevent fraud.

Public policy and convenience would justify a repeal of the law requiring the payment of fees, but until such repeal be effected the law ought to be observed.

(Signed.) H. MAXWELL,
Collector.

From the above letter of Mr. Maxwell, it appears that the act of March 3d, 1849, had reduced the appropriations made to defray the expense of collecting the public revenue to $1,569,000, less, by nearly $500,000, than the appropriation of the preceding year. The Secretary of the Treasury, finding that amount insufficient, issued orders for the reduction of the Revenue Service, and for other retrenchments, as will be seen by reference to the Treasury circular of December 31st, 1849.

See Mayo's synopsis, &c., page 37 of Treas. circulars at end.

The letter of Collector Maxwell of July 15th, 1852, to the Secretary of the Treasury, will show that "*in conse-*

quence of the embarrassments" existing at that time (January, 1851,) and of circular instructions dated December 31, 1849, a "*a change was made*" in the practice of the office under the following order dated January 15th, "to the cashier; hereafter you will receive 20 cents fees for all orders, permits and other documents requiring the collector's signature, including certificate on invoices and shipping manifests, and for ever jurat or verification on oath." It is evident that this departure from the construction which had been put upon the act of 1799, for more than fifty years, was purely a "*consequence*" of the "*embarrassments*" produced by the action of Congress in reducing the appropriation to defray the expenses of collecting the revenue, and was not an interpretation naturally arising out of the language of the law.

These payments were *coerced* they were *not voluntary*. See record, folio 35 and folio 37.

The plaintiffs below did not put in evidence any *written* protest against the exaction, believing none was required, the exaction not being a *duty*; the act of February 26, 1845, does not apply. See Ogden *vs.* Maxwell, 3 Blatch., 319, United States vs. Lawson 101, U. S. 164.

In the latter case the defendant was a collector of customs and had as such collector collected certain fees provided by law to be paid to collectors. The Commissioner of Customs directed the collector to account for those fees and pay them into the Treasury, which he did. He subsequently sought to recover these back from the Government. The latter claimed that the payment by the collector to the Government was voluntary, and, therefore, could not be recovered.

"The court held that having paid the money into the Treasury pursuant to a peremptory order of his superior officer, he was not precluded from recovering them in a suit against the United States."

In the case at bar the defendants in error were compelled to pay the fees exacted in order to pass their entries through

the custom-house and get their permits and goods. The payments were not voluntary but coerced.

The ruling of the court below was correct, and the judgment should be affirmed.

GEORGE BLISS.

17-625

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1126.

THOMAS COCHRAN ET AL., SURVIVORS, &c., PLAINTIFFS IN ERROR,

vs.

AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS.

No. 1127.

AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, PLAINTIFF IN ERROR,

vs.

THOMAS COCHRAN AND WILLIAM BARBOUR, SURVIVORS, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 30, 1882.

SUPREME COURT OF THE UNITED STATES.

No. 1126.

THOMAS COCHRAN ET AL., SURVIVORS, &c., PLAINTIFFS IN ERROR,

vs.

AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS.

No. 1127.

AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, PLAINTIFF IN ERROR,

vs.

THOMAS COCHRAN AND WILLIAM BARBOUR, SURVIVORS, &c.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some of you, between Thomas Cochran et al., survivors, &c., plaintiffs in error, and Augustus Schell, late collector of customs, defendant in error, a manifest error hath happened, to the great damage of the said Thomas Cochran et al., survivors, &c., plaintiffs in error, as is said, and as appears by their complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the third Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of October, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] JOSEPH M. DEUEL,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The within writ is allowed.

WM. J. WALLACE.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph M. Deuel, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from five to fifty-nine, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Thomas Cochran et al., survivor', &c., plaintiffs in error, against Augustus Schell, late collector of customs, defendant in error, and Augustus Schell, late collector of customs, plaintiff in error, against Thomas Cochran et al., defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 27th day of October, in the year of our Lord one

thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

(Indorsed:) O. S., 1865. U. S. circuit court, southern district of New York. E. & A. A 385. Thomas Cochran et al., survivors, &c., pl'ff' in error, vs. Augustus Schell, late collector of customs, d'f't in error. O. S., 1865. Writ of error. George Bliss, pl'ff' att'y. U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

Due service of a copy of within writ of is hereby admitted. Dated Oct. 16, 1882.

S. L. WOODFORD,
Attorney for Defendant in Error.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit before you, between Augustus Schell, plaintiff in error, and Thomas Cochran & William Barbour, survivors, &c., defendants in error, a manifest error hath happened, to the great damage of the said Augustus Schell, as by his complaint appear': We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October, eighteen hundred and eighty-two, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 14th day of October, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] JOSEPH M. DEUEL, *Clerk.*

The foregoing writ is hereby allowed.

WM. J. WALLACE.

4 (Indorsed:) O. S. 1865. E. & A. A. 385. U. S. Supreme Court. Augustus Schell, plaintiff in error, against Thomas Cochran, & ano., &c., defendants in error. Writ of error. S. L. Woodford, attorney for plaintiff in error. To George Bliss, attorney for defendants in error.

Due service of a copy of the within writ of error is hereby admitted this 16th day of October, 1882.

GEORGE BLISS,
Attorney for Def'ts in Error,
P'r A. H.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

See return of clerk on preceding writ of error.

JOSEPH M. DEUEL, *Clerk.*

5 The President of the United States of America, to the judges of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause, commenced before you against Augustus Schell, defendant, by S. Cochran et al., plaintiffs, do therefore command you that the record and proceedings in said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 29th day of February, 1864, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, the 12th day of February, in the year one thousand eight hundred and sixty-four.

[L. S.] KENNETH G. WHITE, *Clerk.*

E. DELAFIELD SMITH, *Defendant's Attorney.*

6 (Indorsed:) U. S. circuit court. Augustus Schell ads. S. Cochran et al. Copy certiorari. E. Delafield Smith, defendant's att'y.

SIR: Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, Feb'y 24, 1864.

Yours, &c.,

E. DELAFIELD SMITH,
Defendant' Att'y.

To , *Plaintiff's Attorney.*

Due service of a copy of the within and of the above notice is hereby admitted.

New York, Feb'y 12, 1864.

K., F., W.,
Plaintiff's Attorney.

7 Circuit court of the United States for the southern district of New York.

S. COCHRANE ET AL., PLAINTIFFS,
against
AUGUSTUS SCHELL, LATE COLLECTOR OF THE port of New York, defendant. } O. S. 1865.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by Kaufmann, Frank & Wilcoxson, their attorneys, come here into court and suggest and give the court now here to understand and be informed that heretofore, to wit, on the 31st day of Dec'r last past, an action was commenced in the supreme court of the State of New York in and for the city and county of New York, according to the laws of the State of New York and the rules and practice of said court in such case

made and provided, in favor and in the name of the said plaintiffs against the defendant herein, upon and for the same cause of action herein-
8 after set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the 31st day of Dec'r, 1863.

That the defendant afterwards, by E. Delafield Smith, esq., his attorney, duly appeared in said action; and such proceedings were thereupon had that afterwards and on the 12th day of Feb., in the year of our Lord one thousand eight hundred and sixty-four, the said action was in due form of law removed, by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided; and the clerk of the said supreme court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court; which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action
9 against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein, in a plea of trespass on the case.

For that whereas the said defendant, on the 31st day of Dec'r, 1863, at the city of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of 1,900 dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by said plaintiffs, before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year,
10 and at the place aforesaid undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the plaintiffs of and concerning, divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of nineteen hundred dollars, of lawful money as aforesaid, and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then there
11 faithfully promised the said plaintiffs' well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above-mentioned, or any or either of them,

or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, has hitherto wholly refused, and still does refuse to the damage of the said plaintiffs of nineteen hundred dollars.

And therefore the plaintiffs bring suit, &c.

KAUFMANN, FRANK & WILCOXSON,
Plaintiff's Attorneys, 39 *Nassau st.*

12 (Endorsed:) U. S. circuit court. S. Cochran et al., plaintiffs, vs. Augustus Schell, late collector of the port of New York, defendant. Declaration.

Take notice that on filing a declaration in this cause, with a copy of which you are hereby served, a rule has been entered in the book of common rules, kept in the office of the clerk of this court, requiring the within named defendant to plead *to plead* to said declaration within twenty days after service of a copy of said declaration and a notice of said rule or judgment on his attorney.

New York, 186 .

KAUFMANN, FRANK & WILCOXSON,
Plff's' Att'ys, 39 *Nassau st.*

To E. DELAFIELD SMITH, Esq.,
Defendant's Attorney, 41 *Chambers st.*

Service of a copy of within is hereby admitted.

E. D. S.,
Defendant's Att'y.

NEW YORK, *Ap'l* 28, 1864.

13 United States circuit court, southern district of New York.

A. SCHELL *ads.* S. COCHRAN & AL. } Plea.

And the said defendant, A Schell, by S. G. Courtney, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

S. G. COURTNEY,
Defendant's Attorney.

To K., F. & W., Esq.,
Plaintiffs' Attorneys.

(Endorsed:) U. S. circuit court. A. Schell ads. S. Cochran & al. Plea.

You will please take notice that the plea of the defendant in the
14 above cause, of which the within is a copy, was this day filed in the

office of the clerk of the U. S. circuit court for the southern district of New York.

New York, April 30, 1866.

Yours, &c.,

S. G. COURTNEY,
Defendant's Attorney.

To K., F. & W.,
Plaintiff's Attorney'.

15 At a stated term of the circuit court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 30th day of April, in the year of our Lord one thousand eight hundred and eighty.

Present, the honorable Samuel Blatchford, judge.

SAMUEL COCHRANE ET AL.
vs.
AUGUSTUS SCHELL. } O. S. 994.

SAME
vs.
SAME. } O. S. 1865.

Upon reading and filing the affidavit of George Bliss, dated M'ch 16th, 1880, and that of Thomas Cochran, dated January 26th, 1880, together with plaintiffs' notice of motion and admission of service thereof. After hearing Mr. Bliss for the plaintiffs, Mr. Woodford appearing for the defendant, and on motion of George Bliss, attorney for the plaintiffs,

16 it is ordered that the two actions above entitled be consolidated into one, to be known as O. S. 1865; said consolidated action to retain the number and place on the calendar which it now occupies. And it is further ordered that the said consolidated action be continued in the name of Thomas Cochran and William Barbour, survivors of S. Cochran & Co. vs. Augustus Schell. And it having been heretofore stipulated in one of said actions that no claim was or should be therein made for a recovery upon what are known as commissions and charges, it is hereby ordered as a condition of the granting of this order that the stipulation shall apply to the action as consolidated.

SAM'L BLATCHFORD.

17 U. S. circuit court, so. dist. of New York.

TUESDAY, *May 2nd*, 1882.

The court meets pursuant to adjournment, and is opened by proclamation.

Present, Judge Shipman.

THOMAS COCHRAN ET AL.
vs.
AUGUSTUS SCHELL. } O. S., 1865.

Mr. Bliss moves that the court direct the jury to find a verdict for the plaintiffs, and is heard in support of said motion. Mr. Herrick is heard in opposition thereto.

The court directs the jury to find a verdict for the plaintiffs for as much of the claim in plaintiffs' bill of particulars as relates to thread lace, and also for so much of the claim in plaintiffs' bill of particulars as relates to illegal fees exacted upon oaths, stamps, transfers, and delivery orders.

The jury say that, by direction of the court, they find a verdict for the plaintiffs upon so much of the claim in plaintiffs' bill of particulars
18 as relates to thread lace, and also upon so much of the claim in plaintiffs' bill of particulars as relates to illegal fees exacted upon oaths, stamps, transfers, and delivery orders, and so say they all.

On motion of Mr. Herrick, the court instructs the jury that the plaintiffs herein are not entitled to recover upon so much of the claim in said plaintiffs' bill of particulars as relates to cotton laces and insertings.

Mr. Bliss excepts to the ruling of the court in instructing the jury that the plaintiffs herein are not entitled to recover upon so much of the claim in said plaintiffs' bill of particulars as relates to cotton laces and insertings.

Prior to the rendering and recording of the verdict herein, Mr. Herrick excepts to the ruling of the court in directing the jury to find a verdict for the plaintiffs upon so much of the claim in plaintiffs' bill of particulars as relates to thread lace, and also upon so much of the
19 claim in plaintiffs' bill of particulars as relates to illegal fees exacted upon oaths, stamps, transfers, and delivery orders.

Counsel for the respective parties herein consenting in open court, it is ordered that it be, and it is hereby, referred to I. Augustus Stanwood, as auditor, to assess and report to this court with all convenient speed the amount due the plaintiffs on the aforesaid verdict herein.

On motion of Mr. Herrick, ordered that the defendant have a stay of proceedings herein for ten days after the coming in of the report of said auditor.

On like motion it is further ordered that a certificate of probable cause be entered herein.

An extract from the minutes.

May 9th, 1882.

JOSEPH M. DEUEL, *Clerk.*

Ex'd: T.

20 (Endorsed:) O. S., 1865. U. S. circuit court, south. dist. of New York. Thomas Cochran et al. vs. Augustus Schell. Verdict May 2nd, 1882. A. W. Griswold, pl'ffs' att'y.

21 Circuit court of the United States for the southern district of New York.

THOMAS COCHRAN ET AL., SURVIVORS, &C., *vs.* AUGUSTUS SCHELL. } O. S., 1865.

In pursuance of an order made in the above-entitled cause, on the 2nd day of May, 1882, by which, among other things, it was referred to the undersigned to adjust the amount due plaintiffs for excess of fees paid defendant under this verdict in this cause rendered May 2nd, 1882:

Now I, I. Augustus Stanwood, auditor, to whom the matter was referred, do report that the plaintiffs are entitled to recover, under said verdict, for
8 such excess of fees paid defendant, the sum of six hundred & thirteen $\frac{20}{100}$

dollars, and to interest thereon from the dates of payment to the date of said verdict, May 2nd, 1882, amounting to eleven hundred & 22 twenty $\frac{60}{100}$ dollars, in the aggregate amounting to seventeen hundred & thirty-four $\frac{80}{100}$ dollars. Dated October 6th, 1882.

I. AUGUSTUS STANWOOD, *Auditor.*

(Indorsed:) U. S. circuit court, south. dist. of New York. Thomas Cochran et al., survivors, &c., vs. Augustus Schell. O. S., 1865. Referee's report of am't due pl'ffs on fees. I. A. Stanwood, auditor. George Bliss, pl'ffs' att'y.

23 And the said defendant, by the U. S. district attorney, his attorney, comes and defends the wrong and injury, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs have above thereof declared against him, and of this he puts himself upon the country, &c. Therefore the issue above joined is ordered by the said court to be tried by a circuit court appointed to be held at the city hall of the city of New York on the first Monday of April, in the year 1882. And now at this day, to wit, the 2nd day of May, 1882, being as yet of the said April term, 1882, before the said justices, at the city hall of the said city of New York, came the said parties by their attorneys aforesaid; and the said circuit judge before whom the said issue*d* was tried, has sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the day and at the place within 24 contained, before Nathaniel Shipman, esq., judge of the said circuit court, came as well the within-named plaintiffs as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made being summoned also came, who, to speak the truth in the matters within contained being chosen, tried, and sworn upon their oaths do say that the said defendant did undertake and promise in manner and form as the said plaintiffs have above thereof complained against him, and they assess the damages of the said plaintiffs,

1,734 80
158 03
1,892 83

by reason of the premises, at the sum of seventeen hundred and thirty-four $\frac{80}{100}$ dollars for excess of fees paid defendant over and above their costs and charges by him about his suit in this behalf expended, and for those costs and charges the sum of one hundred and fifty-eight & $\frac{03}{100}$ dollars. Therefore it is considered that the said plaintiffs recover against said defendant their damages afore- 25 said by the jurors aforesaid in form aforesaid found, and also their costs and charges of increase by the court now here adjudged to the said plaintiffs, with their assent, which said damages, costs, and charges in the whole amount to eighteen hundred and ninety-two & $\frac{83}{100}$ dollars.

Judgment signed this 14th day of Oct., 1882. Hunc pro tunc as of Oct. 7th, 1882, as per order of court.

JOHN A. SHIELDS,
Deputy Clerk.

$1,734.80; costs, 158.03—$1,892.83.

26 (Endorsed:) O. S. 1865 U. S. circuit court. Thomas Cochran et al., survivors, &c., vs. Augustus Schell. O. S. 1865. Judgment roll. George Bliss, pl'ffs' att'y. U. S. circuit court. Filed Oct. 14, 1882. Joseph M. Deuel, clerk.

27 *Bill of exceptions.*

Circuit court of the United States for the southern district of New York.

THOMAS COCHRAN AND WILLIAM BARBOUR, surviving partners of S. Cochran & Co.,
vs.
AUGUSTUS SCHELL.

Afterwards, to wit, at a term of the circuit court of the United States for the southern district of New York, held on the second day of May, 1882, before the honorable Nathaniel Shipman, one of the judges of said court, according to the form of the statute in such case made and provided, the issue joined herein upon the pleadings aforesaid, came on to be tried by a jury of the district aforesaid, for that purpose duly impanelled, at which day came there as well the said plaintiffs as the said defendants, by their respective attorneys aforesaid, and the jurors of the jury
28 aforesaid, impanelled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the said issue; and upon the trial of that issue the counsel for the said plaintiffs, to maintain and prove the said issue on their part, gave in evidence that at various times in the years 1857, 1858, 1859, 1860, and 1861, the plaintiffs' firm imported into the United States, and duly entered at the port of New York, certain goods, wares, and merchandise, namely: Cotton laces and cotton insertings, then and there subject to duties. That said goods consisted of laces and insertings composed wholly of cotton, and were either bleached or dyed; that the defendant, being then and there collector of the said port, levied and assessed duties upon the said goods at the rate of twenty-four per centum ad valorem, which duties at the said rate were paid to the defendant by plaintiffs' firm on each of said entries,
29 under and accompanied by a protest in writing, presented to the said collector at or before the time of such payments respectively, against paying twenty-four per centum duty, claiming that said cotton laces and cotton insertings are specially provided for under Schedule D of tariff act of July 30th, 1846, as modified by the act of March 3rd, 1857, at a duty of nineteen per centum ad valorem, and no more.

That previous to about 1879 there were no cotton laces printed or painted, and that from 1850 to 1861 there were many goods composed wholly of cotton, and bleached, printed, painted, colored, or dyed, such as calicoes (prints), lawns, handkerchiefs, velvets and velveteens, and cotton piece goods generally.

The counsel for defendant offered no evidence.

Counsel for the plaintiffs then requested the court to direct a verdict for plaintiffs on the ground that the goods were liable to a duty of only nineteen per centum, under schedule D of act of 30th July, 1846,
30 as amended by section 1 of act of March 3rd, 1857. The court denied this request; to which ruling the counsel for plaintiffs then and there duly excepted, which exception was duly noted and allowed by the court.

Counsel for defendant then requested the court to instruct the jury that plaintiffs could not recover, on the ground that the duty was correctly as-

sessed at twenty-four per centum under section 2 of act of March 3rd, 1857. Which request the court granted, and to this ruling counsel for plaintiffs then and there duly excepted, which exception was duly noted and allowed by the court.

And inasmuch as none of the said several matters so produced and given in evidence by said plaintiffs, and by their counsel aforesaid excepted to, appear by the record of the verdict aforesaid, the said counsel for said plaintiffs did then and there propose their aforesaid exceptions to
31 the decisions, rulings, and direction of the said judge, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence, and said decisions, rulings, and direction, as aforesaid; and thereupon the said judge, at the request of said counsel for plaintiffs, did put his seal hereto and sign the same on the 7th day of October, A. D. 1882.

N. SHIPMAN, *Judge*. [L. S.]

32 The counsel for the plaintiffs, further to maintain and prove the said issue, gave in evidence a large number of invoices, and entries thereof, made by the plaintiffs' firm, of merchandise imported by them into the port of New York during the period above-mentioned, a copy of one of which invoices is annexed marked Exhibit A, and a copy of one of which entries is annexed marked Exhibit B. And upon the presentation by the plaintiff's firm to the collector of an invoice and entry like said Exhibits A & B, the said defendant, before he would receive them as collector, for the convenience and security of himself and the government, impressed on each invoice a stamp or certificate in the form of that on the back of the annexed copy of invoice marked Exhibit A, which certificate is in the form and words following, viz:

33 One hundred and seventy-six pounds, ½d.

E. D. Ogden.
15 %.

I certify that this invoice was presented to me
On entry 552.
G. S. C.
Endymion.
CUSTOM-HOUSE, NEW YORK
this 19 day of Jan'y, 1858.
(S'g'd) S. P. HUNT,
D. C.

Coin, 2½.
Ch'g's ⅝ bill.

45

And upon each and every entry one of the plaintiffs' firm was required to make and subscribe before the collector or his deputy the owner's or consignee's oath, in form like those on the entry per Endymion, a copy of which is marked Exhibit B; and for each stamp so impressed on each and every invoice the defendant, as collector, exacted, and the plaintiffs' firm paid to him, the sum or fee of twenty cents, and for each oath upon an entry subscribed and sworn to as aforesaid the defendant, as collector, exacted, and the plaintiffs' firm paid to him, the sum or fee of twenty cents.

34 The counsel for the plaintiffs, further to maintain and prove the said issue, gave in evidence that in addition to the duties levied and assessed upon the merchandise imported by them as aforesaid, and in addition to the fee of twenty cents for each oath on an entry and twenty cents for each stamp impressed on an invoice, the defendant, as collector, demanded and exacted from the plaintiffs' firm the sum or fee of twenty cents for each permit to land the merchandise embraced in each entry aforesaid upon which the duties had been paid or secured to be paid, said permit being in the form and words of the one given to land the goods embraced in said entry per Endymion, marked Exhibit B, and being signed by both the collector and naval officer as follows, viz:

PORT OF NEW YORK.

To the inspector of the port:

We certify that S. Cochran & Co. has paid, or secured to be paid
35 the duties on merchandise contained in the following packages, in conformity to the entry thereof of this date, which merchandise was imported in the Endymion, , master, from Liverpool. Permission is accordingly hereby given to land the same, viz:

S C #45 } Two cases linens. 45
" #46 }

Custom-house, Jan'y 19, 1858.

S. P. HUNT,
D'y Collector.

C. S. FRANKLIN,
D'y Naval Officer.

That said fee of twenty cents for each oath, and twenty cents for each stamp, and twenty cents for each permit were exacted by said defendant, as collector, and were paid by plaintiffs' firm with, and at the same time the duties were paid, and without which they could not obtain a permit for the landing and delivery of their goods.

The counsel for the said plaintiffs, further to maintain and prove the said issue on their part, gave in evidence, that upon the entry by the plaint-
36 iffs' firm, at the custom-house, of imported merchandise and the payment of the duties and fees thereon, exacted by the defendant aforesaid, notwithstanding the permit to land said goods, covered all the goods embraced in said entry, certain packages in each invoice, so entered, to wit, one package at least of each invoice, and one package in every ten packages of each invoice, pursuant to the provisions of the statutes in such case made and provided, were, by order of the defendant, as collector, designated upon each invoice, and upon each entry, and also on the permit, to be sent to the public store for examination and appraisement, and the package or packages so designated on said invoice, entry, and permit, were sent by the inspector in charge of the vessel to the public or appraiser's store for examination and appraisement.

After the packages so sent to the public or appraiser's store have been examined and appraised, and report thereof made by the appraiser to the collector, an order was and is required by the plaintiffs' firm
37 from the defendant, as collector, to deliver to the plaintiffs' firm

such examined packages, which order is in the following form, and signed by the collector only, viz:

No. of invoice .]

CUSTOM-HOUSE, NEW YORK,
Collector's Office, Jan'y 21st, 1858.

The storekeeper of the port will deliver the following examined packanes, viz:

(S C) K 45 one case linens, imported by S. Cochran & Co., in the ship Endymion, , master, from Liverpool.

S. P. HUNT,
Dy Collector.

And for each and every such order, without which said examined package could not be obtained, the defendant, the collector, exacted from plaintiffs' firm, and the latter was required to and did pay to the defendant, the sum or fee of twenty cents.

The counsel for the defendant offered no evidence, but then and there requested the court to direct a verdict for the defendant, upon the
38 ground that the several above-mentioned fees exacted by him were authorized by law and paid without protest.

The court denied this request, to which ruling counsel for defendant then and there duly excepted, which exceptions were duly noted and allowed by the court.

Counsel for plaintiffs conceded that the fee of twenty cents, exacted for the permit to land goods was legal, but contended that there was no warrant of law for the exaction of the fee of twenty cents for the stamp or certificate put on the invoice by defendant, nor for the twenty cents for the jurat to the oath on entry, nor for twenty cents for the order for the delivery of examined packages, and requested the court to direct a verdict for the plaintiffs for amount of such fees exacted, with interest, which request the court granted, to which ruling defendant's counsel then and there duly excepted, which exceptions were duly noted & allowed by the court.

The jury thereupon, by direction of the court rendered a verdict
39 for the plaintiffs for the amount of such fees paid, to wit, for .

And inasmuch as none of the said several matters so produced and given in evidence, and by defendant's counsel aforesaid excepted to, appears by the record of the verdict aforesaid, the said counsel for said defendant did then and there propose his aforesaid exceptions to the decisions, rulings, and direction of the said judge, and requested him to put his seal to his bill of exceptions containing the said several matters so produced and given in evidence, and said decisions, rulings, and direction, as aforesaid, and thereupon the said judge at the request of said counsel for defendant did put his seal hereto and sign the same on the 7th day of October, A. D. 1882.

N. SHIPMAN, *Judge.* [L. S.]

40 EXHIBIT A.

1938.] KINGSKITTLE FIFE, 3*d Nov.*, 1857.

Messrs. Samuel Cochran & Co., New York, bo't of Alex'r Lawson, linen manufacturer:

									£	s	d
S C K	45, 1 box	20.45 in.	pillow C. linen	No.	16	m'k'd	No.	8696, @ 13¾	39	17	6
		20.45 "	"	"	17	"	"	9691½, " 15	43	4	4
"	46, 1 box	20 "	"	"	19	"	"	11689½, " 17½	49	4	0
		20 "	"	"	20	"	"	12682, " 18½	52	11	5
									£184	17	3
								Less 1/37 £5, for 36 in. miss. & 2½ % £4 10		9	10
									£175	7	3
								Boxes, &c.		14	
									£176	1	3

41 One hundred & seventy-six pounds ⅓*d.*

E. D. Ogden.

I certify that this invoice was presented to me On entry 552 G.S.C. Endymion. CUSTOM-HOUSE, NEW YORK, this 19 day of Jan'y, 1858. (S'g'd) S. P. HUNT, *D. C.*

Com. 2½.

15 %.

Ch'g's ⅚ bill.

45.

42 EXHIBIT B.

Import.] *Invoice dated* , 188 .

Entry of merchandise imported by S. Cochrane & Co., in the ship Endymion, whereof Hallett is master, from Liverpool New York, January 19th 1858.

Marks.	Nos.	Packages and contents.		15%.		
S C K	45 46	Two cases linens		£176 1 3		
		Com	2½%	8 0		
		Shipping ch'g's		5 6		
					£180 14 9	
					$874 76	
					(Sig'd)	S. COCHRANE & CO.
		One $875—15		$135 25		Gen. W. B. S.

Paid 19th Jan'y.

W. D. R.

General bond No. ; principal, ; surety, .

43 *Consignee's, importer's, or agent's oath.*

I, , do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of New York are the true and

only invoice and bill of lading by me received of all the goods, wares, and merchandise, imported in the , whereof is master, from , for account of any person whomsoever, for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been, on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly swear that, to the best of my knowledge and belief, , the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost or fair market value, at of the said goods, wares, and merchandise, all charges thereon, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

Sworn to before me this day of , 188 .
E. D. C.

Deputy Collector.

Owner's oath.

I, J. B. Cochran, do solemnly and truly swear, that the entry now delivered by me to the collector of New York contains a just and true account of all the goods, wares, and merchandise imported by or consigned to S. Cochran & Co., in the ship Endymion, Hallett, master, from Liverpool; that the invoice which I now produce contains a just and true account of the actual cost of the said goods, wares, and merchandise, of all the charges thereon, including charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up, and packing; and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me; and that they are in the state in which I actually received them; and that the said invoice and declaration therein are in all respects true, and were made by the person by whom the same purport to have been made. And I do further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the account now produced of the said goods, wares, and mer-

chandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

(S'g'd) J. B. COCHRAN.

Sworn to before me this 19 day of Jan'y, 1858.

(Sig'd) L. P. HUNT,
Deputy Collector.

(Indorsed:) Import. S. Cochran & Co., per Endymion, from Liverpool. Jan'y 19th, 1858. 45.

44 (Endorsed:) O. S., 1865. U. S. circuit court, south. dist. of New York. Thomas Cochran et al., survivors, &c., vs. Augustus Schell. Plaintiffs' and defendant's proposed bill of exceptions. George Bliss, att'y for pl'ffs, 11 Pine street, New York, to S. L. Woodford, U. S. att'y. U. S. circuit court. Filed Oct. 14, 1882. Joseph M. Deuel, clerk.

45 *Bond for damages and costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THOMAS COCHRAN ET AL., SURVIVORS, &C., plaintiffs in error,
vs.
AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, defendant in error.
} O. S., 1865.

Know all men by these presents that we, George Bliss, of the city of New York, and Almon W. Griswold, of the city of New York, are held and firmly bound unto the above-named Augustus Schell in the sum of three hundred and fifty dollars, to be paid to the said Augustus Schell, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 13th day of October, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas the above-named Thomas Cochran et al., survivors, &c., have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Thomas Cochran et al., survivors, shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

GEORGE BLISS. [L. S.]
ALMON W. GRISWOLD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 13th day of October, 1882, before me.

[L. S.] A. HEYDENREICH,
Notary Public, Richmond Co., N. Y.

46 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Almon W. Griswold and George Bliss, being duly sworn, each for himself deposes and says that he is worth the sum of seven hundred dollars over and above all his just debts and liabilities.

ALMON W. GRISWOLD.
GEORGE BLISS.

Sworn to this 13th day of October, A. D. 1882, before me.
[L. S.] A. HEYDENREICH,
Notary Public, Richmond Co., N. Y.

(Indorsed:) U. S. circuit court. Thomas Cochran et al., survivors, &c., pl'ffs in error, vs. Augustus Schell, late collector of customs, d'f't in error. O. S., 1865. Bond for damages and costs on appeal to the U. S. Supreme Court. George Bliss, proctor for pl'ffs in error.

The within bond is approved as to form and sufficiency of sureties. Oct. 14, 1882.

WM. J. WALLACE.

U. S. circuit court. Filed Oct. 14, 1882. Joseph M. Deuel, clerk.

47 *Assignment of errors.*

Supreme Court of the United States.

THOMAS COCHRAN AND WILLIAM BARBOUR, survivors, &c., plaintiffs in error,
vs.
AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, defendant in error.
} O. S., 1865.

Of October term, in the year of our Lord one thousand eight hundred and eighty-two.

Afterwards, to wit, on the third Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, came the said Thomas Cochran and William Barbour, survivors, &c., by George Bliss, their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the said circuit court of the United States for the southern
48 district of New York, at the said time, refused to direct a verdict in favor of the said plaintiffs for the excess of duty above 19 % ad valorem claimed to have been paid on cotton laces and insertings; and that said court granted the request of defendant to instruct the jury that upon this issue plaintiffs could not recover; and that said court thereupon directed the jury to find that the plaintiffs could not recover upon said issue.

And the said Thomas Cochran and William Barbour, survivors, &c., pray that the judgment upon the ruling and instructions of the court aforesaid may be reversed, annulled, and altogether held for naught, and

that they may be restored to all things which they have lost by occasion of the judgment on the aforesaid ruling and instructions.

GEORGE BLISS,
Attorney for Pl'ffs in Error.

49 (Endorsed:) O. S., 1865. Supreme Court of the United States. Thomas Cochran et al., survivors, &c., pl'ffs in error, vs. Augustus Schell, late collector of customs, d'f't in error. Assignment of errors. George Bliss, att'y for pl'ffs in error.

Due service of a copy of within assignment of errors admitted. October 16, 1882.

S. L. WOODFORD,
Attorney for Defendant in Error.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

50 *Joinder in error.*

Supreme Court of the United States.

THOMAS COCHRANE, & WILLIAM BARBOUR, survivors, &c., plaintiffs in error,
against
AUGUSTUS SCHELL, DEFENDANT IN ERROR.

And afterwards, to wit, on the third Monday of said term, before the justices of the said court, the said defendant in error, by Stewart L. Woodford, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid. And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

S. L. WOODFORD,
Attorney for Defendant in Error.

51 (Endorsed:) O. S. 1865. U. S. Supreme Court. Thomas Cochran & ano., &c., plaintiffs in error, versus Augustus Schell, defendant in error. Joinder in error. Stewart L. Woodford, United States attorney, attorney for defendant in error. To George Bliss, attorney for plaintiffs in error.

Due service of a copy of the within is hereby admitted.

GEORGE BLISS,
Att'y for Pl'ffs in Error.

NEW YORK, *October* 16, 1882.

U. S. circuit court. Filed Oct. 16, 1882.

JOSEPH M. DEUEL, *Clerk.*

52 *Assignment of error.*

Supreme Court of the United States.

AUGUSTUS SCHELL, PLAINTIFF IN ERROR,
against
THOMAS COCHRAN & WILLIAM BARBOUR, SURVIVORS, &c., defendants in error.

Afterwards, to wit, on the third Monday of October, in the same term, before the justices of the said court, at the Capitol, in Washington, comes the said plaintiff in error, by S. L. Woodford, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in favor aforesaid given, was given for the said defendants in error against the said plantiff in error; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants.

53 And the said plaintiff prays that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

S. L. WOODFORD,
Attorney for Plaintiff in Error.

(Endorsed:) O. S. 1865. U. S. Supreme Court. Augustus Schell, plaintiff in error, versus Thomas Cochran & ano., &c., defendants in error. Assignment of error. Stewart L. Woodford, United States attorney, attorney for pl'ff in error. To George Bliss, attorney for def'ts in error.

Due service of a copy of the within is hereby admitted.

GEORGE BLISS,
Att'y for Def'ts in Error.

NEW YORK, *October 16th*, 1882.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

54 *Joinder in error.*

Supreme Court of the United States.

AUGUSTUS SCHELL, LATE COLLECTOR OF CUSTOMS, plaintiff in error,
vs.
THOMAS COCHRAN ET AL., SURVIVORS, &C., defendants in error.
O. S. 1865.

And afterwards, to wit, on the third Monday of October, 1882, the said Thomas Cochran et al., survivors, &c., defendants in error, by George Bliss, their attorney, come here into court and say that there is no error either in the record or proceedings aforesaid or in the giving in the judgment aforesaid.

And they pray that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the records and proceedings aforesaid as the matters aforesaid above assigned for error, in form aforesaid given, may be in all things affirmed, &c.

GEORGE BLISS,
Attorney for Defendants in Error.

55 (Endorsed:) U. S. Supreme Court. Augustus Schell, late collector of customs, pl'ff in error, vs. Thomas Cochran et al., survivors, &c., def'ts in error. O. S. 1865. Joinder in error. George Bliss, att'y for def'ts in error.

Due service of a copy of within is hereby admitted.
Dated October 16th, 1882.

S. L. WOODFORD,
Attorney for Pl'ff in Error.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

56 UNITED STATES OF AMERICA, *ss:*

To Augustus Schell, late collector of customs, defendant in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October, eighteen hundred and eighty-two, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Thomas Cochran et al., survivors, &c., are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated, New York, October 14th, 1882.

WM. J. WALLACE,
Circuit Judge.

57 (Indorsed:) O. S. 1865. U. S. Supreme Court. E. & A. A 385. Thomas Cochran et al., survivors, &c., plaintiffs in error, against Augustus Schell, late collector of customs, defendant in error. O. S. 1865. Citation. George Bliss, att'y for pl'ffs in error.

Due service of a copy of within citation is admitted.
Dated Oct. 16, 1882.

S. L. WOODFORD,
Attorney for Defendant in Error.

U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

58 UNITED STATES OF AMERICA, *ss:*

To Thomas Cochran and William Barbour, survivors, &c., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third

Monday of October, eighteen hundred and eighty-two, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Augustus Schell is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated October 14th, 1882.

WM. J. WALLACE,
Circuit Judge.

59 (Indorsed:) O. S., 1865. U. S. Supreme Court. E. & A. A 385. Augustus Schell, plaintiff in error, against Thomas Cochran & ano., &c., &c., defendants in error. Citation. S. L. Woodford, attorney for plaintiff in error. To George Bliss, attorney for defendants in error.

Due service of a copy of the within citation is hereby admitted this 16th day of October, 1882.

GEORGE BLISS,
Attorney for Def'ts in Error.
A. H.

(Indorsement on cover:) No. 1126. Thomas Cochran et al., survivors, &c., plaintiffs in error, vs. Augustus Schell, late collector of customs. And No. 1127. Augustus Schell, late collector of customs, plaintiff in error, vs. Thomas Cochran & William Barbour, survivors, &c. S. New York C. C. U. S. Filed 30th October, 1882.

MAR 3 1909

In the Supreme Court of the United States,

No. 1126.

THOMAS COCHRAN, et al., Survivors, etc.,

Plaintiffs in Error,

vs.

AUGUSTUS SCHELL, late Collector of Customs,

Defendant in Error.

Error to the Circuit Court of the United States.

BRIEF FOR PLAINTIFFS IN ERROR.

NATIONAL REPUBLICAN PRINT.

Supreme Court of the United States,

No. 1,126.

THOMAS COCHRAN et al., Survivors,
Plaintiffs in Error,

vs.

AUGUSTUS SCHELL, Late Collector of Customs,
Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

This was an action of assumpsit brought—originally in the State Court, but removed into the United States Circuit—by the plaintiffs against the defendant, as collector of customs for the port of New York, to recover, among other monies exacted of them, excess of duties paid under protest on certain "cotton laces and insertings," imported into New York by plaintiffs, between July 1, 1857, and April 8, 1861.

Upon the trial in the circuit before Judge Shipman and a jury, in May last, it appeared that the plaintiffs were compelled to pay 24 per cent. duty on certain cotton laces and insertings, imported and entered by them at the custom-house;

That before paying the duty on said laces they protested in writing against paying more than 19 per cent. duty, claiming that said laces and insertings were specially provided for under schedule D of the tariff act of July 30, 1846, (9 Stat.

at L., 46-7,) as modified by the act of March 3, 1857, (11 Stat. at L., 192,) at a duty of 19 per cent. ad valorem, and no more.

See Record, page 9, folio 28–9.

It was admitted on the trial that plaintiffs' "laces and insertings" were either "bleached" or "dyed;" that prior to about 1879 there were no "printed" or "painted" cotton laces, and from 1850 to 1861 there were many goods composed wholly of cotton and bleached, printed, painted, or dyed, such as calicoes, (prints,) lawns, handkerchiefs, velvets and velveteens, and cotton piece-goods generally.

The defendant offered no evidence upon the law and the facts; counsel for the plaintiffs requested the court to rule and instruct the jury to find a verdict for plaintiffs, on the ground that the goods were liable to a duty of 19 per cent. only, under Schedule D, of the act of 1846, as amended by Section 1, of the act of March 30, 1857.

The Court denied this request and instructed the jury that the plaintiffs could not recover, on the ground that the duty was correctly assessed at 24 per cent., under section 2, of the act of March 3, 1857, 11 Stat. at L, 192, as "manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines."

To this ruling the plaintiffs' counsel excepted.

Record page 9–10, folio 29–30.

The error assigned is that the court refused to direct a verdict for the plaintiffs for the excess of duty above 19 per cent. *ad valorem*, claimed to have been paid, under protest, on bleached or dyed "cotton laces and insertings;" but did rule and instruct the jury that upon this issue the plaintiffs could not recover.

I. In Schedule D, of the act of 1846, 9 Stat. at L., 46–47, under which a duty of 25 per cent. is imposed, we find

"Cotton laces, cotton insertings, cotton trimming laces, cotton laces and braids," and in the same schedule are also

embraced "manufactures composed wholly of cotton, not otherwise provided for."

These provisions being in force, the act of March 3, 1857, entitled "*An act reducing the duty on imports*, and for other purposes," was passed, which provides, in Section 1, that there shall thereafter be imposed upon the articles enumerated in Schedules A and B, of the Tariff Act of 1846, a duty of 30 per centum, and upon those enumerated in Schedules C, D, E, F, G, and H, of said act, the duties of 24 per cent., 19 per cent., 15 per cent, 12 per cent., 8 per cent., 4 per cent., respectively, &c., "*with such exceptions as are hereinafter made.*"

11 Stat. at L., 192.

Under this section, reducing the duty on articles embraced in Schedule D, plaintiffs claim that the duty on "cotton laces, cotton insertings, cotton trimming laces, cotton laces and braids," which were specially enumerated, was reduced to 19 per cent.

But the defendant in error claims that cotton laces and insertings, &c., we are rendered liable to the duty of 24 per cent. imposed by Schedule C, because section 2, of the Act of 1857, provided, "*that all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines*," shall be transferred to Schedule C.

11 Stat. at L., 192.

This is the whole question involved in this portion of the present case, viz: whether cotton laces and insertings, under the act of 1857, we are liable to 24 per cent. duty, as "manufactures composed wholly of cotton," or to 19 per cent. as "cotton laces and insertings;" and this in turn brings up the question, whether the general terms of section 2, of the act of 1857, control the specific enumeration of the article in schedule D.

II. The plaintiffs in error are laboring under some embarrassment in presenting their case to this court. If the decision in Arthur vs. Lahey, 96 U. S., 112, is to be followed, if the court really meant all it said in deciding *that* case, it would seem to be decisive of *this*, and to render extended argument wholly useless.

In that case, the plaintiffs imported certain articles of silk manufacture, known as *Thread Laces*, on which defendant exacted the duty imposed on *manufactures of silk*, viz: 60 per cent. Plaintiffs there claimed that the goods were "*Thread Laces*;" and as such were specifically provided for at 30 per cent. duty, and so not within the general language applicable to manufactures of silk, though they were composed of that material. This court there says:

"It was proved by the witnesses and found by the jury, that although made of silk, the laces in question were commercially known as thread laces.—Whether an article is thread lace, it was shown, depended upon the mode of its manufacture—as upon a cushion, from thread wound on bobbins, moved by hand—and that it was *equally thread lace*, whether made of *cotton*, or silk, and whether white or black * * * and that thread lace made of linen had been practically unknown for many years."

The court, after reviewing all the cases bearing on the question, laid down, "as established, the following propositions:"

"*First.* The commercial designation of an article among traders and importers, where clearly established, fixes its character for the purpose of the tariff laws."

"*Second.* When Congress had designated an article by its *specific* name, and imposed a duty upon it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it."

"*Third.* That the expression 'not otherwise provided for,' in the eighth section of the act of 1864, does not deprive these rules of their ordinary application."

In the case at bar there was no question of fact in controversy. The plaintiff's goods were admitted to be "cotton laces" and "cotton insertings," (page 9, folio 28, 29, of Record.) This admission is in accordance with the declaration of this court in Arthur *vs.* Lahey, that "there are articles commercially known as *silk* laces, and articles commercially known as *cotton* laces. * * * * These distinctions are also well known and recognized in the tariff laws of the country. This court then adds: "In the years mentioned, acts were passed in which the articles were named as here stated with the different duties upon each"

"July 30th, 1846.
"Cotton laces at ..... 25 *per centum*
"Thread laces at ..... 20 " "
"9 Stat. at L., pages 46-7.

"March 3d, 1857.
"*Cotton laces* at ..... 19 *per centum*
"Thread laces at ..... 15 " "
"11 Stat. at L., page 192.

"March 2d, 1861.
"Silk laces at ..... 30 *per centum*
"Cotton laces at ..... 20 " "
"Thread laces at ..... 20 " "
"Cotton lace, colored, at ..... 30 " "
"12 Stat. at L., pages, 186, 189, 190, 191.

"July 14, 1862.
"Thread laces at ..... 30 *per centum*
"Cotton laces at ..... 25 " "
"12 Stat. at L., pages 550, 556, sec. 6, 13.

"June 30, 1864.
"Silk laces at ..... 60 *per centum*
"Cotton laces at ..... 35 " "
"13 Stat. at L., pages 209, 210.

"Revised Statutes.

"Cotton lace, colored, at .....35 *per centum*
"Cotton lace at.....35 " "
"Thread lace at .....30 " "
"Silk laces at .....60 " "

"Rev. St., pages 464, 466, 472.
"do. February 8th, 1875.
"18 St., page 307."

The court might have commenced its citations of statutes imposing duties on thread and cotton laces, by name, with the act of "August 30, 1842, which provides for

"Thread laces at ..... 15 *per centum*
"Cotton laces at .....20 " "
"5 Stat. at L., page 549.

It will thus be seen that in arriving at its decision in that case, this court cited and drew its argument from the different statutes imposing specific duties on "*cotton laces*" *by name*, and stated that under the act of March 3, 1857, they were liable to a duty of 19 per cent. (96 U. S., page 114.) *That* is precisely what the plaintiffs claim, and *all* that they claim in this case.

If, therefore, it is assumed, as we must assume, that the court meant all it there said, and intends to stand by the broad, well-defined propositions laid down in that case, then it would seem a useless waste of its time for counsel to enlarge further. The decision of the court below must, in such case, be reversed.

If, on the other hand, the statement of this court in Lahey *vs.* Arthur, that the act of 1857 provided a duty of 19 per cent. on all cotton laces is to be disregarded, and the structure built up on the statutes cited as the basis of that decision topples over, then the case at bar must be argued without any special reference to the case of Arthur *vs.* Lahey more than to any other case bearing on the question.

III. Whatever construction the court may place on the language of the second section of the act of March 3, 1857, it seems clear that it cannot, consistently with principle or decisions, hold that it is broad enough to carry "cotton laces and cotton insertings" into schedule C, and impose 24 per cent. duty on them on the mere ground that they are "manufactures of cotton, *bleached or dyed*," for these same goods are positively, *specifically*, and unconditionally provided for *by name* in schedule D as "cotton laces, cotton insertings," &c., as they have been in all the seven acts hereinbefore referred to, from 1842 down to 1875. Such a construction cannot be given without overruling a long series of decisions of this court, of which it happens that the most recent are in their principles, most directly applicable.

IV. The case of Arthur *vs.* Rheims, (96 U. S., 143,) is directly in point.

Rheims imported into New York a quantity of artificial flowers, composed of iron, paper, wire and cotton, on which the collector imposed a duty of 50 per cent. *ad valorem* under section 12, of the act of 1864.

Rheims claimed that these goods were entitled to a deduction of ten per centum, under section 2, of the act of June 9th, 1872, which says:

"On all manufactures of cotton, of which cotton is a component of chief value, on all iron and steel, and all manufactures of iron and steel, of which such metals, or either of them, shall be the component part of chief value, excepting cotton machinery."

This Court says:

"The general words of the act of 1872, no doubt, are sufficiently comprehensive to embrace the case before us. Artificial flowers are a manufacture, of which cotton is the chief component part, and were that all, would be entitled to the deduction asked for. But it is true, also, that they are dutiable under the law of 1864, not as manufactures of cotton, but specially, *eo nomine*, as artificial flowers.

"It has been held, in many cases, as that of "almonds, and dried fruit," the "Canary birds," and at the present term in the case of "thread laces," and of "chocolate," that when a certain article is intended to be made dutiable by its specific designation, it will not be affected by the general words of the same or another statute, which would otherwise embrace it.

"This rule applies both to statutes reducing and to statutes increasing duties. Giving it such application here, we must hold that 'artificial flowers' are not entitled to be classed as a manufacture of cotton, which is entitled to the reduction provided for by the act of 1872."

V. The purpose and object of Congress in making the exception contained in section 2 of the act of 1857, is clear if we go back and examine the prior tariff acts covering such goods. The act of 1832, sec. 3, 4 Stat. at L., 583, provides,

"That all manufactures of cotton, or of which cotton shall be a *component part*, *not dyed*, *colored*, *printed*, *or stained*, not exceeding in value *thirty cents a square yard*, shall be valued at *thirty cents* a square yard, and if *dyed*, *colored*, *printed*, *or stained*, in whole or in part, not exceeding in value thirty-five cents the square yard, shall be valued at thirty-five cents per square yard," on which an *ad valorem* duty of 35 per cent. was imposed.

It will be seen that this section embraces cotton and worsted goods, as well as those of all cotton. Then comes the act of August 30th, 1842, 5 Stat. at L., 549, sec. 2 of which provides that

"On all manufactures of cotton or of which *cotton shall be a component part*, not otherwise specified, a duty of *thirty per centum ad valorem*, (excepting such cotton twist, yarn, and thread, and such other articles as are herein provided for): *Provided*, That all manufactures of COTTON, or of which cotton shall be a component part, *not dyed*, *colored*, *printed or stained*, not exceeding *twenty cents* a square yard shall be valued at twenty cents a square yard; *and if dyed*, *printed*, *colored*, *or stained*, in whole or in part, not exceeding in value *thirty cents* the square yard, shall be valued at *thirty cents* the square yard, excepting velvets, cords, moleskins, etc., etc., etc., shall be thirty-five cents."

It will be observed that both these acts provide for the payment of duty on the *square yard* value of these goods—the latter act making a discrimination of one-third in the amount of duties between those which are *undyed*, *etc.*, and those which are dyed; and, as a matter of course, the provisions of these acts did not, and could not have been intended to apply to any manufactures of cotton, except such as could be, and usually are, valued by the *square yard*—such as piece goods—calicoes (prints), lawns, muslins, handkerchiefs, and piece goods generally. That is made apparent from the fact that the goods mentioned in the first part of the section in the act of 1842, composed wholly or in part of *cotton*, are not to be valued on the square yard basis.

It certainly was not intended to apply to *thread or cotton laces and insertings*, because they were specifically provided for in the first section of the same act of 1842, subdivision 9, as follows: "On all *thread laces* and insertings, 15 per cent. *ad valorem;* on *cotton laces*, *quillings*, and *insertings*, usually known as trimming laces, and on bobinet laces of cotton, 20 per cent. *ad valorem.*"

The provisions just cited were in force when the act of 1846 was passed, which is entitled an act "reducing the duty on imports, and for other purposes," section 1 of which provides, "that in lieu of the duties heretofore imposed by law on the *articles hereinafter mentioned*, and on such as are now *exempt* from duty, there shall be levied, collected, and paid on the goods, wares, and merchandise herein enumerated and provided for, &c., &c.

Schedule D, of the act of 1846, in providing for "manufactures composed wholly of cotton, not otherwise provided for," seems to have ignored the discrimination between *undyed* and *dyed* goods, which the above acts of 1832 and 1842 had made, and to have simply provided that such "manufactures composed wholly or in part of cotton, not otherwise provided for," meaning, as it seems, the *square yard* or *piece goods* mentioned in the act of 1842, whether undyed or dyed, shall pay a duty of 25 per cent. *ad valorem.*

In Reiche *vs.* Smythe, (13 Wall., 164,) this principle of reference to a former statute to ascertain what was intended was sustained. The case was this: The 23d section of the act of March 2, 1861, provides that "animals living, of all kinds, birds singing and others, land and water fowls," shall be exempt from duty.

The act of May, 1866, provided that a duty of 20 per cent. *ad valorem* should be imposed on all horses, mules, cattle, sheep, hogs, *and other live* animals." After the passage of this act the collector exacted 20 per cent. duty on a lot of canary birds, which was paid under protest.

The court said: "The act of 1866 is comprehensive enough to include canary birds, and if there had been no previous legislation there would be justification for the position that Congress did not intend to narrow the meaning of the words. The act of 1861 intended birds to be admitted free of duty, and the act of 1866 must be limited to animals, *ejusdem generis*, with cattle, sheep, and horses. The two acts are *in pari materia*, both remaining in force; that of 1861, admitting birds free of duty, and that of 1866, imposing the duty on horses and like animals notwithstanding the general terms of the latter."

The court adds, "it is fair to presume in case a special meaning were attached to certain words in a prior tariff act, that Congress intended they should have the same signification when used in a subsequent act in relation to the same subject matter."

Now, appplying this principle to the case at bar, under schedule D, of act of 1846, "cotton laces, cotton insertings, cotton trimming laces, cotton laces and braids" are *specifically* provided for by name at 25 per cent. duty, in the same way as they had been *specifically* provided for at 20 per cent. under the 1st section of the act of 1842, 5 Stat. at L. 549; while under schedule E, act of 1846, at 20 per cent. are

"*Caps, gloves, leggings, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton, worn by men,*

women and children, * * "*gunny cloths*," * * * *thread laces and insertings*." (Thread laces are composed of cotton or silk. See Arthur vs. Lahey, 96 U. S. R., 112.) "Velvet in the piece, composed wholly of cotton".

The foregoing shows the *general* provisions for duties on "manufactures composed wholly of cotton," as well as the various articles composed of cotton which were *specifically* provided for *by name* in the act of 1846, in force at the time the tariff act of 1857, was passed.

Now, what object had Congress in view, in 1857, in making this transfer to schedule C, of "*all manufactures composed wholly of cotton which are bleached, printed, painted or dyed, and delaines?*" And what was intended to be embraced in it?

The plaintiffs in error claim it was simply to restore the discrimination between *undyed* and *dyed* "manufactures composed wholly or in part of cotton," which had been provided for, first, in act of 1832, and again in the act of 1842, but which the act of 1846 had ignored or overridden, and thus to provide, that those goods which had been subjected to the process of "bleaching, printing, painting or dyeing," should be subjected to the increased rate of duty by transferring them to schedule C in this.

This provision would restore the discrimination—the protection which the acts of 1832 and 1842 gave to our "print works," establishments where all the different processes of bleaching, printing, painting and dyeing of piece goods were performed, and would leave all the "*unbleached*" and "*undyed*" "manufactures composed wholly of cotton," capable of *square yard valuation*, and all the various manufactures of cotton specially provided for by name, whether dyed or undyed, undisturbed in their original schedules D and E.

Congress had apparently one other object in view in framing this 2nd section of the act of 1857, and that was to protect a new industry then just established in this country, viz: the manufacture of "*delaines*"—a cotton and worsted fabric—

hence it singled out of the "manufactures of worsted, or of which worsted shall be a component material," provided for in schedule D, this new fabric, and transferred that also to schedule C.

Having these two special objects in view, how could it more aptly define its intentions than by the concise language employed? "*All* manufactures composed wholly of cotton, *which* are bleached, printed, painted or dyed, and *delaines*," in the light of the previous legislation above referred to on the subject, means the same as if it read:

"Such of the 'manufactures composed wholly of cotton'—now embraced in schedule D—'as are *bleached*, *printed*, *painted or dyed*, *and delaines*,' shall be transferred to schedule C."

This, we submit, is the natural import of the language employed, and this construction would leave unbleached cottons under the *general* provision in schedule D, covering "manufactures composed wholly of cotton" undisturbed, while these four descriptions or kinds of cottons, viz., bleached, printed, painted or dyed goods, and also the single article of delaine, composed of cotton and worsted, and which is here mentioned for the first time in the tariff acts of the United States—are transferred to schedule C. And it would also leave undisturbed the various other manufactures of cotton which were specifically provided for by name in schedules D and E of the act of 1846, as noted above.

On the other hand, if the construction claimed by defendant, and given by the court below, is correct, and the general provision or language, "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines," is to prevail over the specific duties provided for these different articles, then not only "cotton laces and insertings" in schedule D are transferred to schedule C, but *caps*, *gloves*, *leggins*, *mits*, *socks*, *stockings*, *wove shirts and drawers*, *made on frames*, composed *wholly of cotton*" and "thread laces and insertings," when composed of

cotton, as they sometimes are—see Arthur *vs.* Lahey, 96 U. S., 112—and "*velvets* in the piece, composed wholly of cotton," in schedule E, are all transferred to schedule C. In other words, these articles of merchandise specifically provided for by name, at a duty of 20 per cent. *ad valorem* under the act of 1846, instead of being *reduced* to 15 per cent., are robbed of their respective commercial designations, of their specific names, and thrust into the cotton schedule C, at an *increased* duty of 24 per cent., under the act of 1857, the title of which declares it to be "An act *reducing* the duty on imports, &c., &c."

VI. The attempt may be made to distinguish the case at bar from that of Arthur *vs.* Lahey and Homer *vs.* The Collector, and the other cases in *this* Court. It will, perhaps, be claimed, that the 2nd section of the act of 1857, which provides that "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines," transfers to schedule C, and so renders liable to pay 24 per cent. duty, *bleached* and *dyed* cotton laces and insertings, but that this leaves the *unbleached* and *undyed* article, if any such are ever imported, undisturbed under schedule D and liable to 19 per cent. duty.

In other words, while the *bleached*, *printed*, *painted* or *dyed* cotton laces and insertings lose their commercial designation and identity as cotton laces, and must pay 24 per cent. duty, as manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, under schedule C, the *unbleached* article—if there is any such—retains its commercial designation and identity as "cotton laces and insertings," and retains its place under schedule D, where it is liable to only 19 per cent. duty.

And so with bleached or dyed "caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton," and bleached or dyed "thread laces and insertings," and bleached or dyed "velvet in the piece, composed wholly of cotton," they are deprived of their

designation and identity, and thrust into the cotton schedule C, liable to 24 per cent. duty, as manufactures composed wholly of cotton, while these same articles, when *unbleached* or *undyed*, if they are ever imported in that condition, are liable to 15 per cent. duty imposed on them by their respective *specific names;* so that, in a qualified form, effect would be given to all the provisions of the statute imposing duties on "cotton laces and insertings," and on "cotton hosiery," and on "thread laces and insertings, made of cotton," and on "velvet in the piece composed wholly of cotton."

But I apprehend this court will not take that view of the law.

If it holds that bleached or dyed cotton laces and insertings can for any purpose be deprived of their commercial designation and considered as "*manufactures composed wholly of cotton which are bleached, printed* or dyed," it must also hold that, when unbleached or undyed, if they ever came in that condition, they are still "manufactures composed wholly of cotton, unbleached and undyed." And so with unbleached or undyed caps, gloves, leggins, &c., &c., composed wholly of cotton, and unbleached thread laces composed of cotton, and unbleached velvets in the piece composed of cotton, if they ever come in that condition. The court must hold that they are still manufactures composed wholly of cotton unbleached and undyed, and as such liable to 19 per cent., under schedule D.

The Government's theory that the unbleached and undyed articles retain their respective distinctive names and are liable to the duty imposed on them as such will not work in all cases. Take, for instance, "velvet in the piece, composed wholly of cotton," it is always "bleached, printed, painted or dyed," and at that time was never imported in any other form; hence there would be no form or condition of cotton velvet that would not be covered by the term "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed." There would be no

"velvet in the piece composed wholly of cotton," to which the specific duty provided for in that act would apply.

So with thread laces, when composed of cotton; if bleached, printed, painted or dyed, they would pay 24 per cent. as "manufactures composed wholly of cotton, which are bleached, printed, painted or dyed." Though it does not so appear in this case, it is nevertheless a fact that cotton thread laces are always bleached, are made of bleached cotton thread and are never imported in an unbleached condition; hence there would be no thread lace to which the specific duty of 15 per cent. would apply.

VII. We find but one case in all the Federal Reports which sustains the views of the law taken by the Court below in this case, and that is the case of Reimer vs. Schell, 4 Blatch., 328, and it was upon *that* case that Judge Shipman based his ruling in this.

The defendant in that case had exacted 24 per cent. duty, under the Tariff Act of 1857, on "caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton, &c., &c.," which were embraced in schedule E, and liable to 20 per cent. duty, under the act of 1846, and the plaintiffs in that action claimed that the first section of the act of March 3d, 1857, reduced the duty on articles in schedule E, of the act of 1846, to 15 per cent. "with such exceptions as are hereinafter made."

The second section provides that "all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed, and delaines, shall be transferred to schedule C."

The court, Nelson, Justice in that case says: "The controversy is whether the goods in question are subject to a duty of 15 per cent. or 24 per cent. It is claimed, on the part of the importers, that the goods remain under schedule E, of the Act of 1846, and are of course, subject only to the reduced rate of duty of 15 per cent. while the government claim that they have been transferred by the language used in the second section of the act

of 1857, to schedule C, and are therefore subject to the 24 per cent. duty. *I think the latter the sounder construction of the act.* The goods fall directly within the description '*all manufactures composed wholly of cotton, which are bleached, printed, painted or dyed.*' The legislature *designates the articles by special description*, as contra-distinguished from a *designation by a commercial name*; and the proper enquiry is as to their qualities and characteristics, with a view to ascertain if they came within the description. If they do, "no argument can take them out of the rate of duty which has been imposed."

Because that case does not appear to have been expressly cited and overruled by *this* court, it was taken by Judge Shipman to be the law, at least in the Second Circuit, and he followed it, or rather said: "This case will go to the Supreme Court *any way*, and for the purposes of this trial I will follow the decision in Reimer *vs.* Schell."

But that case stands isolated and alone, and is in direct conflict with all the decisions of this court on the subject, beginning with Homer *vs.* Collector, 1 Wall, 486, and coming down through Reiche *vs.* Smythe, 13 *id.*, 162, Smythe *vs.* Fisk *et al.*, 23 *id.*, 374, Movias *vs.* Arthur, 95 U. S., 144, Arthur *vs.* Morrison, 96 U. S., 108, and Arthur *vs.* Lahey, 96 *id.*, 112, where all these cases are reviewed and approved.

So far as I have been able to discover, Reimer *vs.* Schell has never been cited or referred to in any case in this or any other court, either by counsel or court, except on the trial of this case below.

At the time of the decision in Reimer *vs.* Schell there had been no decisions of this court to guide or assist the learned judge in disposing of it. The question was a new one. Although Reimer *vs.* Schell was decided in May, 1859, it was not reported till 1868, nine years afterwards. About that time the question came up in Boston, and Judges Curtis and Sprague were divided in opinion.

In 1863 that case, Homer *vs.* The Collector of Boston, 1 Wall, 486, was decided by this court—the opinion was written by Judge Nelson—in which the doctrine is distinctly

and unqualifiedly laid down that where an article of merchandise is provided for at a given rate of duty by a *specific* name or designation, and is also covered by a *general* provision, at a different rate, duty is to be assessed on the article according to its special or *specific* name, and not under the *general* provision.

And because the learned judge who delivered the opinion of this court in that case made no reference to the case of Reimer *vs.* Schell, which he had himself decided in the Second Circuit, four years before, it was claimed by the Government on the trial below of this case to be evidence that this court did not intend in Homer *vs.* The Collector to overrule or criticise Reimer *vs.* Schell.

It is doubtful if at the time Homer *vs.* The Collector was decided this court had ever heard of the case of Reimer *vs.* Schell, although it had been decided four years previously, for, as we have said, it had not then been reported, and was not reported until five years later, in 1868. And if this court has *ever* heard of the case, at any time, it has maintained an ominous silence touching it, as I have no where seen it cited in this or any other court.

Homer vs. *The Collector* was really the *first*, the *pioneer* case, in which this question was squarely raised in this court, and it unquestionably received a *consideration* here which had not been bestowed on the case of Reimer *vs.* Schell, in the Circuit Court.

In Reimer *vs.* Schell the learned judge says, after stating the question:

"The goods fall directly within the description, all manufactures composed wholly of cotton," &c.

Further on he says:

"The first section of the act of 1857, which reduced the rate of duty upon goods under schedule E, in the act of 1846, contemplated exceptions," &c., &c. * * * "These exceptions are found in the next section, and the very first one is

the one in question. *All manufactures composed wholly of cotton which are bleached, printed, painted, or dyed, which articles as thus described, under whatever schedule arranged in the act of 1846, are transferred to schedule C* and subjected to a duty of twenty-four per cent."

Now, this same judge, in Homer *vs.* The Collector, speaking for this court, says:

"*The argument is that almonds are dried fruit, and, hence, are provided for in the second section of the act of 1857, and evidence was offered on the trial to show that such was the commercial sense of the term. But this inquiry has nothing to do with the question, and, indeed, it is difficult to see how any such inquiry could take place, except as a matter of curiosity and speculation, * * * as duty has been imposed on almonds,* eo nomine, *almost immemorially. * * * The article, as we have seen, is charged* SPECIFICALLY *with a duty of 40 per cent.* ad valorem *in the act of 1846, and is not* NAMED in the changes of the act of 1857."

Applying this decision, in Homer *vs.* Collector, to the case of Reimer *vs.* Schell, the Court would say:

"The argument is that 'caps, gloves, leggings, mits, socks, stockings, wove shirts and drawers, &c., &c., composed wholly of cotton' are 'manufactures composed wholly of cotton,'" and hence are provided for as such, under schedule C, at 24 per cent. But this has nothing to do with the question. The articles, as we have seen, were charged '*specifically*"' in the act of 1846, in schedule F, at 20 per cent, and are not *named* in the *changes* of the act of 1857.

I have dwelt upon the case of *Reimer* vs. *Schell*, because of the peculiar position it seemingly occupies, if not as an authority against us, yet as a sort of stumbling-block—a *bête noir*—in the Second Circuit—though it would appear wholly unnecessary to do so in the case at bar, unless this court is prepared to reconsider and reverse all its decisions on this point, and especially that in the case of Arthur *vs.*

Lahey, already referred to, which is seemingly decisive of this case.

VIII. The plaintiffs in error submit that upon the case they have presented the decision of the court below on this part of the case should be reversed.

GEORGE BLISS.

OFFICE SUPREME COURT, U. S.
FILED
MAR 3 1909
JAMES H. McKENNEY, CLERK

Supreme Court of the United States.

No. 1127.

AUGUSTUS SCHELI,

Plaintiffs in Error,

vs.

THOMAS COCHRAN, Survivor, etc.,

Defendant in Error.

BRIEF FOR DEFENDANTS IN ERROR.

NATIONAL REPUBLICAN PRINT.

Supreme Court of the United States,

No. 1127.

AUGUSTUS SCHELL, *Plaintiff in Error*,

vs.

THOMAS COCHRAN, Survivor, etc., *Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR.

In this branch of the case the question in dispute is as to the right of the Collector at New York to require the payment of certain fees on the entry of goods. Defendants in error having paid under compulsion fees which they claim were illegal brought suit to recover them. At the trial a verdict was by direction of the court rendered for defendants in error. To reverse this decision a writ of error was taken by the Government.

The question can be best explained to the court by describing the manner in which entries were made at the New York Custom House at the time the fees were exacted, say from 1857 to 1861.

The merchant first presented to the entry clerk his *invoice* on which the latter stamped with a rubber or metal stamp a certificate like that found at folio 33 of the Record, stating the invoice had been "presented to me."

He then presented his *entry* to a deputy collector, and having subscribed the oath on it, the latter swore him.

Certain packages were then designated on the invoice and

entry, by the deputy collector, for examination by the Appraisers (the law required at least one in ten, sec. 21 of act of 1842, 5 Stat. at L., 565.)

This being done, the merchant took the invoice and entry to the Cashier and paid the duty, and at the same time he was required to pay 20 cents for each stamp impressed on an invoice, and 20 cents for each oath on an entry.

Upon the payment of the duties and these fees, a permit was granted, for which a fee of 20 cents was also paid, as described in the Record—page 11, folio 35—directing the inspector, in charge of the ship, to land—to deliver the goods described in it, viz: [S. C. K.] No. 45, No. 46, two cases linens.

These packages were delivered at the vessel's dock—No. 46 was delivered to the merchant, but No. 45, having been designated on the invoice, and also on the entry, and on the permit, to be sent to the Public Store for appraisement, was not delivered to the merchant, but was ordered to be delivered to the Public Store to enable the appraisers to test the correctness of the invoice; and, after examination by the appraisers, it could not be had by the importer without an order from the collector to deliver. See page 12, folio 37.

For this order the importer was charged 20 cents, although he had already paid twenty cents for his permit for the two cases—No. 45 and No. 46 being included in that permit—but No. 45 having been sent to the Public Store for examination and appraisement, he was compelled to pay another fee for his permit before he could get that case.

The following fees were demanded and paid on every entry, and without the payment of which by the merchant he could not obtain the permit to land and deliver his goods, viz:

For permit (see page 11, folio 35 of Record) . . . .20 cents
For each stamp (some invoices are stamped twice, once for a consumption and once for a warehouse entry) . . . . . .20 cents

For each oath (an entry frequently has two oaths, an owner's and a consignee's oath)..... .. 20 cents
For order on storekeeper to deliver examined packages ..... 20 cents

It will be seen, therefore, that at least eighty cents were exacted on every entry and upon some entries two or three times eighty cents—depending on the number of invoices embraced in an entry, each invoice being stamped.

Now, of *these* fees the defendants in error claim, none except that for the *permit* to land are authorized by law, and were never exacted at any Custom House in the United States except New York, and never exacted there till January 15, 1850, more than fifty years after the date of the act of 1799, under the second section of which authority is claimed for their exaction now—as we shall see hereafter.

(See act of 2d March, 1799. Sec. 2, chap. 23, 1 Stat. at L. 706.)

This act is entitled "An Act to establish the compensation of the officers employed in the collection of duties on imports and tonnage, and for other purposes," and section 2 reads as follows:

"SEC. 2. *And be it further enacted*, That from and after the last day of March next, *and in lieu of the fees* and *emoluments heretofore* established, there shall be allowed and paid for the use of the collectors, naval officers and surveyors, appointed and to be appointed in pursuance of law, *the fees following;* that is to say; to each collector for every entrance of any ship or vessel of one hundred tons burthen and upwards, two dollars and an half; for every clearance of any ship or vessel of one hundred tons burthen and upwards, two dollars and an half; for every entrance of any ship or vessel under the burthen of one hundred tons, one dollar and an half; for every clearance of any ship or vessel under one hundred tons burthen, one dollar and an half; for every post entry two dollars; *for every permit to land goods, twenty cents;* for every bond taken officially, forty cents; for every permit

to load goods for exportation, which are entitled to drawback, thirty cents; *for every debenture or other official certificate, twenty cents:* for every bill of health, twenty cents; *for every official document* (registers excepted) *required by any merchant, owner or master of any ship or vessel not before enumerated, twenty cents.*" * * * *

The provisions of this act are embodied in section 2654 of the U. S. Revised Statutes and constitute the law on the subject in force to-day, as follows:

"There shall be allowed and paid for the use of the collectors the following fees:

"1st. To each collector for every entrance of any vessel of one hundred tons burden and upwards, two dollars and a half.

"2d. For every clearance of any vessel of one hundred tons burden and upwards two dollars and a half.

"3d. For every entrance of any vessel under the burden of one hundred tons, one dollar and a half.

"4th. For every clearance of any vessel under one hundred tons burden, one dollar and a half.

"5th. For every post entry, two dollars.

"6th. For every permit to land goods, twenty cents.

"7th. For every bond taken officially, forty cents.

"8th. For every permit to load goods for exportation, which are entitled to drawback, thirty cents.

"9th. For every debenture or other official certificate, twenty cents.

"10th. For every bill of health, twenty cents.

"11th. For every *official document* (registers excepted) *required* by any merchant, owner or master of any vessel, not elsewhere enumerated, twenty cents."

The fee of twenty cents for every "permit to land goods" is legal. The law also allows twenty cents for "every debenture or other *official* certificate," and also twenty cents for every *official document* (registers excepted) *required* by any merchant, owner or master of any ship or vessel.

The only authority for charging the fees exacted by the plaintiff in error must be found in the provisions just cited. No fees are chargeable, as a matter of course, except these es-

tablished by law. See Ogden *vs.* Maxwell, 3 Blatch, 322, where the whole question is considered.

It cannot be claimed that a jurat to an oath, or a stamp on an invoice is either "an official certificate" or "an official document" required by any merchant.

Besides section 36 of the act of 1799, ch. 22, prescribes the form of an entry of imported merchandise, which is to be made under oath, and the form of the oath is also prescribed and this oath must be taken before the collector. See 1 Stat. at L. 656–7.

If a fee was to be allowed the collector for this it would not have been enumerated among the other fees mentioned in the 2d section of the act cited.

The record states that the stamp on the invoice was placed there by the collector "for the convenience and security of himself and the Government."

See page 10, folio 32, of record.

The order to deliver examined packages sent to Appraisers or Public Store is not given for the convenience of the merchant, but for the convenience and accommodation of the collector or the Government. It is not an *official document*, as we shall presently see, for it is not countersigned by the Naval Officer

The act of March 2, 1799, chap. 22, sec. 21, 1st Stat. p. 642, defines the duties of naval officer as follows:

"The naval officer shall receive copies of all manifests and entries, and shall, together with the collector, estimate the duties on all goods, wares, and merchandise subject to duty, (and no duties shall be received without such estimate,) and shall keep a separate record thereof, *and shall countersign all permits, clearances, certificates, debentures, and other documents to be granted by the collector.*" * * *

The provisions of this section as to the duties of naval officer are embodied in the United States Statutes, section 2,626.

The record shows that the "permit" is the only paper ("certificate, document, or order") in question signed by the collector or deputy collector which was in fact *countersigned by the naval officer*, and as the law *requires* the naval officer to *countersign all permits, clearances, certificates, debentures*, and *other documents* to be *granted* by the collector, it follows that the "*permit*" is the only paper involved in this case which can be called a "certificate" or "document" for which the collector had a right to charge twenty cents.

The act of March 2, 1799, ch. 22, prescribes forms of all these *certificates, permits, clearances, debentures*, and *other documents* which are to be countersigned by the naval officer. In section 49, 1 Stat. at L., 664–5, the form of a permit will be found. This, as all the others are, is in the plural.

It begins with "*we certify.*" "We," the collector and naval officer. (See page 11, folio 35 of record.) The other alleged certificate on the invoice says: "*I certify* that this invoice was presented *to me.*"

If he chose to do so, for his own convenience, the collector might stamp a like certificate on the *entry*, using the word *entry* in place of invoice, and he might also put a like stamp on each bill of lading presented him on entry, and he would have the same right to charge twenty cents for every such stamp as he had to charge for the stamp on the invoice. It would not be "*an official certificate* or an *official document required by any* merchant."

Whatever this stamp or certificate on the invoice may be, it was not a stamp, certificate, or document *required* by any merchant, because the merchant did not *receive* it—did not *have* it. It never went into his possession, but went directly on file in the custom-house, and remained there in the custody of the collector. Supposing the collector had chosen to stamp on the invoice, "I certify that this invoice was this day *filed by me*," he might as well certify *that* as to certify that it was this day *presented to me.*

The "official certificate" or "official document" required by any merchant contemplated some certificate or document which the merchant was to *receive*—which he was to take and carry away as he received and carried away a *permit*.

Now the order to deliver the examined package, found on page 12 folio 37 of Record, is not an order or document mentioned or provided for in the acts cited, or in any statute of the United States. It does not pretend to *certify anything*. It does not say "the duties have been paid or secured to be paid." The collector and naval officer together had already formally *certified to that*, in the permit granted two days before. See Permit, page 11 folio 35 of Record.

This order is simply a *direction* to the storekeeper, to deliver this package, which was embraced in the original permit to land, but which was sent in the first instance to the public store to enable the appraisers to perform their duty of examining the goods and verifying the value. That being done, and the appraisers having reported to the collectors that the value was correct, &c., &c., the latter says to the merchant, now you can have that case also, and here is an order for it, signed by the collector *only*. (See page 12 folio 37.

Let us now briefly notice the cause of this new construction of an old law and this departure from a long established usage, as they are narrated by Hugh Maxwell, esq., Collector of Customs in the following letter to the Secretary of the Treasurer.

COLLECTOR'S OFFICE, CUSTOM HOUSE,
NEW YORK, *July* 15, 1852.

SIR: Your letter of the 18th instant, with application of H. & F. W. Meyer for return of fees collected from them since January, 1850, is received.

In reply, I have the honor to state that in consequence of the embarrassments existing at that time and of circular instructions, dated December 31, 1849, a change was made in our practice under the following order dated January 15th. "To the Cashier: Hereafter you will receive twenty cents fees for all orders, permits and other documents, requiring the collector's signature, including certificates on

invoice and shipping manifests and for every jurat or verification on oath.

This direction was made upon consultation with the Commissioner of Customs, who was here at the time, my Deputies and Auditor all agreeing that the charges were authorized under the provisions of the second section of the act 1799, entitled, "An act to establish the compensation of officers," under the terms for "every debenture or other official certificate." also for every official document required by any merchant, owner or master of any ship or vessel not before enumerated."

The change of practice was reported officially to the Commissioner of Customs, with a list of fees and charges made under date of January 18, 1851.

The charges now made are, for stamp upon invoice, for jurat of deputy collector, for order to send goods for examination to No. 12 Broad street, and to deliver goods after examination.

The statement of Mr. Russell is correct as to the practice in this office of entering goods and passing entries.

If it be true that at other ports these charges are not made, our merchants are subject to a charge of 60 cents at least, and sometimes 80 cents upon each entry, not charged in other places. As to the fees, for stamps upon invoices and orders, it may be a question whether merchants should be charged with them. inasmuch as stamps are employed for greater caution to prevent fraud.

Public policy and convenience would justify a repeal of the law requiring the payment of fees, but until such repeal be effected the law ought to be observed.

(Signed.) H. MAXWELL,
Collector.

From the above letter of Mr. Maxwell, it appears that the act of March 3d, 1849, had reduced the appropriations made to defray the expense of collecting the public revenue to $1,569,000, less, by nearly $500,000, than the appropriation of the preceding year. The Secretary of the Treasury, finding that amount insufficient, issued orders for the reduction of the Revenue Service, and for other retrenchments, as will be seen by reference to the Treasury circular of December 31st, 1849.

See Mayo's synopsis, &c., page 37 of Treas. circulars at end.

The letter of Collector Maxwell of July 15th, 1852, to the Secretary of the Treasury, will show that "*in conse-*

quence of the embarrassments" existing at that time (January, 1851,) and of circular instructions dated December 31, 1849, a "*a change was made*" in the practice of the office under the following order dated January 15th, "to the cashier; hereafter you will receive 20 cents fees for all orders, permits and other documents requiring the collector's signature, including certificate on invoices and shipping manifests, and for ever jurat or verification on oath." It is evident that this departure from the construction which had been put upon the act of 1799, for more than fifty years, was purely a "*consequence*" of the "*embarrassments*" produced by the action of Congress in reducing the appropriation to defray the expenses of collecting the revenue, and was not an interpretation naturally arising out of the language of the law.

These payments were *coerced* they were *not voluntary*. See record, folio 35 and folio 37.

The plaintiffs below did not put in evidence any *written* protest against the exaction, believing none was required, the exaction not being a *duty*; the act of February 26, 1845, does not apply. See Ogden *vs.* Maxwell, 3 Blatch., 319, United States vs. Lawson 101, U. S. 164.

In the latter case the defendant was a collector of customs and had as such collector collected certain fees provided by law to be paid to collectors. The Commissioner of Customs directed the collector to account for those fees and pay them into the Treasury, which he did. He subsequently sought to recover these back from the Government. The latter claimed that the payment by the collector to the Government was voluntary, and, therefore, could not be recovered.

"The court held that having paid the money into the Treasury pursuant to a peremptory order of his superior officer, he was not precluded from recovering them in a suit against the United States."

In the case at bar the defendants in error were compelled to pay the fees exacted in order to pass their entries through

the custom-house and get their permits and goods. The payments were not voluntary but coerced.

The ruling of the court below was correct, and the judgment should be affirmed.

GEORGE BLISS.

OFFICE SUPREME COURT U. S.
FILED
MAR 6 1883
JAMES H. McKENNEY, Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

COCHRAN, &c.,
v.
SCHELL, COLLECTOR,
AND
VICE VERSA.
} Nos. 1126, 1127.

BRIEF FOR THE COLLECTOR.

The *first* of these cases involves a question as to the proper rate of duty upon *cotton laces* and *cotton insertings* imported in the years 1857 to 1861, inclusive; the *second*, a question as to the legality of certain fees charged upon importations at same time.

The briefs of the learned counsel for the importers presents the facts, statutes, and authorities very fully and fairly, and what remains to be done is chiefly to observe upon the extent to which the decisions cited by him bear upon this record.

1. As to the rate of duty:

Schedule C of the act of 1846 imposed a duty of 30 *per cent.* upon "*cotton cords, gimps, and galloons,*" * * * *manufactures of cotton* * * * *if embroidered or tamboured in the loom or otherwise by machinery, or with the needle or other process.*

Schedule D imposed 25 *per centum* upon "*cotton laces, cotton insertings, cotton trimming laces, cotton laces, and braids.* * * * *manufactures composed wholly of cotton not otherwise provided for.*"

Schedule E imposed 20 *per centum* upon "*caps, gloves, leggins, mits, socks, stockings, wove shirts and drawers, made on frames, composed wholly of cotton, worn by men, women, and children,* * * * *velvet in the piece, composed wholly of cotton.*" (9 Stat., 44, &c.)

I believe that the above provisions are all in the act of 1846, which, in terms, concern things made of cotton entirely.

Thereupon the act of 1857 (entitled "An act reducing the duty upon imports, and for other purposes") by its first section, in lieu of the above duties imposed upon the articles included in Schedule C, 24 *per cent.;* upon those in D, 19 *per cent.*, and upon those in E, 15 *per cent.*, "*with such exceptions as are hereinafter made.*"

The second section begins, "*That all manufactures composed wholly of cotton, which are bleached, printed, painted, or dyed, and delaines, shall be transferred to Schedule C.*"

In other words, inasmuch as all manufactures of cotton, excepting such as were *tamboured*, were provided for in the act of 1846, in schedules D and E, it was intended by the act of 1857 that *relatively to other articles in the act*

of 1846 "manufactures composed wholly of cotton" should, in general, be subjected to a *higher* duty.

The question is, whether this phrase includes the *cotton laces* and *cotton insertings* mentioned in the record and also mentioned in Schedule D.

If there were in the act of 1846 such a phrase as "*manufactures composed wholly of cotton*," besides the other phrases "*cotton laces*," &c., &c., it might be admitted that although the former phrase in ordinary usage includes the latter yet that on the face of the act it did not do so there, and consequently that in a later *amendatory* act the same restrictive meaning would be given.

But that is not the case. Where the above phrase occurs in the act of 1846 it is modified by the words "not otherwise provided for," which signify that there were other manufactures wholly of cotton therein provided for; that is, that in the act of 1846 the class *manufactures composed wholly of cotton* was provided for under more than one item. The question is, *where?*

The phrase "*manufactures of cotton*" occurs elsewhere in the act only once, in Schedule C, where it is qualified by the words "*embroidered or tamboured.*" But I submit that the *manufactured* is plainly implied in several other places. "*Cotton* gimps" means gimps *manufactured* of cotton, so "*cotton* laces" and "*cotton* insertings." In these cases the statute designates a manufacture by the material of which it is made, and imposes a duty with reference to manufacture and material both.

If the statute had spoken of *laces* in general, (including therein silk, linen, and cotton laces), there might be

room to doubt whether a later amendatory statute which speaks of manufactures *of cotton* included such laces—in case there were also in the previous statute a number of articles specified as *of cotton*.

In such case it would have appeared in the former act that no stress was laid upon the *material* of which the lace was made, and it might fairly be argued that the denominations spoken of in the later act were only those so denominated in the former. Such seems to be a principle that has received sanction in this court.

But it is to take another and a material step to say that where the previous statute contains precise and careful allusions to *cotton* as the material of which various articles therein mentioned by their respective names, must be manufactured in order to be liable to such and such duties, a subsequent act which groups "all manufactures of cotton" together does not include all of these. It is the material, *the cotton*, which is mentioned in both acts as the ear-mark of the article to be rated.

Nor, as is submitted, is there anything in the words which limit the phrase "*all manufactures composed wholly of cotton*" in the act of 1857, viz, "*which are bleached, printed, painted, or dyed*," to contradict this conclusion, however, it may qualify it. The laces in question were "either bleached or dyed." (Record, folio—). That so compact a statute as that of 1857 added adjectives to "*bleached*" and "*dyed*" but were not then applicable to *laces*, &c., does not signify that it included only such articles as were then sometimes found "*printed*" and "*painted*" as well as

"*bleached*," or "*dyed*"—but, reddendo singula singulis, that it includes all such articles as had been known in commerce under either condition.

I will now examine the authorities cited in the brief of the learned counsel for the importers:

1. Homer *v.* Collector (1 Wall., 486):

There is nothing in the act of 1846 to show that "almonds" were regarded therein as "fruit." In various parts of it, however, *currants, figs, bananas, oranges*, &c., were spoken of, and, besides, "fruit, green or ripe, not otherwise provided for." In that state of the case it was held that the expression "fruit, green, ripe, or dried" in the act of 1857, could not be shown by parol evidence of commercial usage to include "almonds." The view of the court was that the statute of 1846 had not regarded them as "fruit."

If that statute had contained a paragraph in Schedule B, headed "*Fruit:* almonds, figs, currants," &c., the case would have been like the present; and, as I submit, would have been otherwise decided. For it is to be borne in mind that the *laces*, &c., in question are mentioned in the act of 1846 virtually as manufactures-of-cotton.

2. Reiche *v.* Collector (13 Wall., 162):

In that case the act of 1861 had provided that "*animals, living, of all kind; birds, singing and others*," should be exempt; and thereupon the act of 1866 imposed a duty of 20 per cent. upon "*all horses, mules, cattle, sheep, hogs, and other live animals.*"

It was consequently held, reading these acts as in pari materia, that for customs purposes "live animals" do not include "birds."

If the act of 1861 had provided, "*Animals, living of all kinds:* horses, cattle, hogs, birds," &c., I submit that the decision would have been in point here, and would have been otherwise. For in this act of 1846, there is for the articles now in question an implied *heading* to the effect that they belong to the class manufactures-of-cotton.

3. Collector *v.* Fiske (23 Wall., 374):

I do not readily perceive how this case applies to the contention of the importers. The "silk ties" in question there had, as I understand it, never been mentioned in any statute imposing duties. Whether, therefore, they come within the general words of the act of 1861, or of that of 1864, seems not important at present.

4. Movius *v.* Collector (95 U. S., 144):

There an act of 1862, and several preceding had imposed a duty upon "*patent leather.*" It was held, therefore, that the act of 1872 did not include that article in the expression, "*Skins, dressed and finished, of all kinds.*" The view was that "patent leather" had been regarded previously as rather a manufacture of *leather* than of *skins;* in other words, the previous tariff acts had not referred them to *skins* or their class.

This is like Homer *v.* Collector.

5. Collector *v.* Morrison (96 U. S., 108):

I submit that this case also throws no light upon the present controversy, inasmuch as the "*crape veils*" there in question had never been mentioned by name in the acts under consideration. The question here is not, as there and in Fiske's case (above), whether one unenumerated specific article can be included under another which is enumerated, but whether it is incompetent for the legislature to deal with an article by the name of its class in law because in previous statutes in pari materia such article has been mentioned *by its name*, even if in the same connection it was denoted as belonging to that class.

6. Collector *v.* Lahey (96 U. S., 112.)

This also is like Homer *v.* Collector, for there was nothing to show that the legislature had previously treated "*thread laces*" with any reference to the material of which they were made. Upon the contrary, the previous legislation had ignored that element. It was, therefore, to be supposed that in a subsequent statute, making provision for manufactures of a certain material, "thread laces" were not included. The class into which these laces were expressly grouped theretofore (viz, *thread*) was not to be broken up by ambiguous expressions in a later statute.

Upon the whole the principle in Homer *v.* Collector, and Reiche *v.* Smythe, which lead the other cases, requires that in previous statutes some usus loquendi shall have grown up denying to the general expression in question its ordinary significance; whereas here the previous statutes virtually contain dictionary clauses showing that the legislature was advertent to, and acted upon that "ordinary significance."

Besides the case of Reimer *v.* Schell, referred to in the

brief for the importers, I refer to the opinion of Judge Shipman in Borsdorff *v.* Barney, notes of which, received from the office of the United States attorney for southern New York, I append.

2. In No. 1127 the question is whether the certificates in question were such as by law are "required" by merchants who have customs business to transact. It seems by a statement in the brief of the learned counsel (p. —) that they are, and that they always have been, although no fee therefor was charged until about 1850. The test of the validity of that charge is, of course, not the date at which or the reasons for which it was actually first exacted, or that it is exacted only at the port where two-thirds of our total importation occurs, but whether the official papers under consideration were *required* in the course of business. This matter seems not to admit of elaboration.

It is submitted in this case that there is error in the direction of the court below that the jury should find for the plaintiffs.

S. F. PHILLIPS,
Solicitor-General.

BORSDORFF
v.
BARNEY.

The COURT. The proposition is undoubted that "when Congress has designated an article by a specific name and imposed a duty

upon it by such name, general terms in a subsequent act, or in a later part of the same act, although sufficiently broad to comprehend such article, are not applicable to it."

The question here is whether this principle is applicable to this case.

The facts are that in the act of July 30, 1846, the plaintiff's importations were classed under Schedule E, in the following terms: "Caps, gloves, &c., stockings, &c., made on frames, composed wholly of cotton, worn by men, women, and children," and were dutiable at 20 per cent. ad valorem.

The first section of the act of March, 1857, reduces the duty upon the articles enumerated in Schedule E to 15 per cent., with such exceptions as hereinafter made; and the second section provides that all manufactures composed wholly of cotton, which are bleached, &c., or dyed, shall be transferred to Schedule C, whereby they were made dutiable at 24 per cent.

Had the first section simply reduced the duty upon the articles in Schedule E to 15 per cent., without stating any exceptions, the quoted proposition would have applied; but Congress said, on the other hand, "All the articles in Schedule C, except as excepted, shall pay 15 per cent.," and the first exception was in regard to manufactures wholly of cotton which had passed beyond the unbleached state. So that the effect of the two sections, so far set forth, as hosiery goods wholly of cotton, made on frames, worn by men, women, and children, shall pay 15 per cent., except such as are bleached, printed, painted, or dyed, which shall pay 24 per cent.

Judge Nelson, in Reimer *v.* Schell (4 Blatchf., 328), answers the argument in regard to particular enumeration in the same way. He says, "It is argued also," &c. (reading).

This case is very different from that of Homer *v.* Collector (1 Wall., 486). (Quotes facts in the statement of facts in the Homer case.)

The point in the court below was whether almonds were commercially a fruit or whether they were nuts, and so not within the exception.

The Supreme Court, through Judge Nelson, said "This inquiry is immaterial, because almonds, *eo nomine*, have been dutiable since 1804, and full effect can be given to the term fruit dried, without the forced construction to bring almonds within it."

In this case full effect cannot be given to the term "All manu-

factures of cotton which are bleached," &c., unless it is made to embrace those manufactures to which the bleaching or printing or dyeing process is applicable.

It is said that the exception applies only to piece goods. I find no adequate grounds for such a distinction in the tariff acts of 1846 and 1847.

Had the expression "manufactures of cotton" which are bleached," &c., been found in the act of 1846 there would have been a far stronger analogy between this case and that of Homer *v.* Collector.

It must not be forgotten that the decision of Judge Nelson in Reimer *v.* Schell, a case precisely the same facts and upon the same clause of the statute, has not been overruled directly, and I think has not been overruled by implication.

The motion of the plaintiff is overruled, and a verdict for the defendant will be directed.